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Lee's Laws of British Shipping and Marine Assurance / Edited by J. C. Bigham / 1877

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THE LAWS OF BRITISH SHIPPING.

To entitle a ship to the character and privileges of a British registered ship, that ship must be owned, built, and registered in terms of the Merchant Shipping Act, the requirements of which will now be detailed.

I.—PROPERTY IN BRITISH SHIPS.

I.—OWNERSHIP AND DESCRIPTION OF BRITISH SHIPS.

No ship is held to be a British ship unless she belong wholly to owners of the following description:—(1.) Natural-born British subjects—*i.e.*, persons born in the British dominions, territories, colonies, or dependencies; but no natural-born subject who has taken the oath of allegiance to any foreign sovereign or state is entitled to be an owner, unless, subsequently to taking such oath, he has taken the oath of allegiance to Her Majesty, and is, and continues to be, during the whole period of his being such an owner, resident in some place within Her Majesty's dominions; or, if not so resident, member of a British factory, or partner in a house actually carrying on business in the United Kingdom, or some other place within Her Majesty's dominions. (2.) Persons made denizens by letter of denization (*i.e.*, a foreigner born, who is made a British subject by letters patent from the crown), or naturalised by or pursuant to any Act of the Imperial Legislature, or by or pursuant to any Act or ordinance of the proper legislative authority in any British possession, by which a foreigner born is placed in the very same state as if he had been born in allegiance to the British crown, with a few exceptions, unconnected with the ownership of British registered ships; but such persons must be, and continue to be, during the whole period of their so being owners, resident in some place within Her Majesty's dominions; or, if not so resident, members of a British factory, or partners in a house actually carrying on business in the United Kingdom, or in some other place within Her Majesty's dominions, and must have taken the oath of allegiance to Her Majesty subsequently to the period of their being so made denizens or naturalised.[1] (3.) Bodies corporate (*i.e.*, a number of individuals united and consolidated and incor-

[1] The rights of aliens were much enlarged by the 33 and 34 Vict., cap. 14, but the Act expressly provides (sec. 14), that nothing therein contained shall qualify an alien to be the owner of a British ship.

porated into one continuous body corporate, which is held, in law, the same as one person), established under, subject to the laws of, and having their place of business in, the United Kingdom, or some British possession.[1]

But trading firms or companies cannot, as such, be owners or part-owners of a British registered ship. And, therefore, should a ship, or part of a ship, be acquired by a firm or company, the conveyances must be taken, and the ship registered, in name of one or more of the partners, as an individual or as individuals, and as sole and absolute owner or owners of the ship or shares, without any mention of the firm or company,—though the practice is, for the party or parties whose name or names appear on the register to grant a written declaration to the firm or company that the ship is, or the shares are, company property.

Individual owners and bodies corporate (by their secretary or public officer) require, previous to being registered as owners, to make the respective declarations prescribed by sections 38 and 39 of the Merchant Shipping Act, as after noticed.

Every British ship must be registered in the manner after mentioned, except—(1.) Ships duly registered before the Merchant Shipping Act came into operation; (2.) Ships not exceeding fifteen tons burden, employed solely in navigation on the rivers or coasts of the United Kingdom, or some British possession, within which the managing owners of such ships are resident; (3.) Ships not exceeding thirty tons burden, and not having a whole or fixed deck, and employed solely in fishing, or trading coastwise, on the shores of Newfoundland or ports adjacent thereto, or in the Gulf of St. Lawrence, or on the coasts of Canada, Nova Scotia, or New Brunswick, bordering on that Gulf,—and no ship thus required to be registered can, unless registered, be recognised as a British ship; and no officer of customs must grant a clearance or transire to any ship so required to be registered, for the purpose of enabling her to proceed to sea as a British ship, unless the master (captain) produce to him, on being required so to do, his ship's certificate of registry, as is after mentioned; and if such ship attempts to proceed to sea, as a British ship, without a clearance or transire, the customs' officer can detain that ship until the certificate is produced to him.[2]

II.—PROPERTY ACQUIRED IN SHIPBUILDING.

The primary manner in which the property of a British ship can be acquired, is by that ship being built, under contract and specifications, for a certain party or parties, or, by the property of a ship being acquired, while in the course of building, by a purchaser; and questions have arisen with the shipbuilder's creditors as to what property a person, for whom a specific vessel is building, acquires in that vessel while in the course of building,—or what property the purchaser of a vessel acquires in the vessel so building.

The following case in the Court of Common Pleas points out the distinction between an ordinary bargain to build a vessel,—and, where the vessel, being begun to build, becomes the property of the employer by appropriation:—A barge-builder undertook to build a barge for an employer, who advanced him money before the work began, and, as it proceeded,

[1] 17 and 18 Vict., cap. 104, sec. 18.

[2] Sec. 19.

paid him the whole value; but it did not appear that the bargain for building the barge had stipulated for the advances which were made, nor did these appear to have been regulated by the progress of the work. When nearly finished, the employer's name was painted on the stern, and, two days afterwards, the barge was completed; but, before it was delivered, it was taken in execution by a creditor of the builder, and it was subsequently claimed by the assignees in his bankruptcy: and the court held, that the only effect of the payments was, that the builder was under a contract to build the barge, but, until it was finished, it was not so far the employer's that he could take it away, and it was not finished at the bankruptcy; that the painting of the name on the stern made no difference; and that, till the barge was finished and delivered, no property passed.[1]

In the two cases now to be noticed, the principle was clearly established that, when the price of the vessel building is to be paid by fixed instalments, payable at certain stages as the building advances—as payment of the first and of the other instalments during the work—the property of the vessel, in the course of construction in terms of the contract and specifications, and for which these payments have been made, becomes the property of the party or parties for whom that vessel is building, but subject to the shipbuilder's right of retention, for the purpose of finishing his contract, and in security of any unpaid part of the past due instalments, and of the instalments to become due.

In the first case, a shipbuilder had entered into a written contract with an employer to build for him a ship, to be launched in April; the payment was to be by four instalments,—at the laying of the keel,—at the light planks,—at the finishing,—and at the launching; and the first and second instalments were paid. In March, the employer appointed a master, who, from that time, superintended the building; and in May, the employer advertised the ship for charter, and, with the builder's knowledge, chartered her in June for a voyage to Newfoundland. The builder granted the necessary certificate of build, &c., as required by the Registry Act, and she was measured, surveyed, and registered, in the employer's name on 25th June. The builder committed an act of bankruptcy on 30th June, the ship being then incomplete; but his people continued working on her till 3d July, when the third instalment was paid. On 2d July, the employer appointed a crew, who took possession of the ship; but the fourth instalment was not paid. The main question, which arose between the employer and the assignees under the builder's bankruptcy, was whether the assignees were entitled to the value of the ship? Lord Tenterden, however, in delivering the opinion of the court, held, that when a ship is built under a *special contract*, and it is part of the terms of that contract that given portions of the price shall be paid according to the progress of the work,—as part when the keel is laid, part when the light planks, &c.,—the payment of these instalments appropriated specifically to the purchaser the very ship so in progress, and vested in him a property in the ship; and that, as between him and the builder, he is entitled to insist upon the completion of that very ship, and the builder is not entitled to require him to accept any other.[2]

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[1] Mucklow *v.* Mangles, 1 Taunt. 318.
[2] Woods *v.* Russell, 5 B. and A. 942.

In another case, a person contracted with a shipbuilder to build a ship for him at a certain sum, to be paid by instalments as the work proceeded, —the first when the vessel was rammed, the second when she was timbered, the third when she was decked, &c.; and an agent for the purchaser was to superintend the building. The building of the vessel was proceeded with under such superintendence, and all materials were approved of by the agent before being used; but the builder became bankrupt before the vessel was completed, and the vessel was completed by his assignees under his bankruptcy. All the instalments were paid or tendered. And in a question between these assignees and the purchaser as to the property in the vessel, the court decided,—that on the payment of the first instalment, the property in the portion then finished became, by virtue of the contract, vested in the purchaser, subject to the right of the builder to retain such portion for the purpose of completing the work and earning the rest of the price; and that each material subsequently added became, as it was added, the property of the purchaser, as the general owner.[1]

The distinction between a general bargain for building a vessel without any special agreement for paying the price by instalments as the building proceeded, and a bargain for a vessel to be built under a specific contract, by which the price is to be paid by certain instalments in the progress of the work, is well illustrated by the following case in the Court of Exchequer:—

In 1833, and up to the time of his bankruptcy, L. was a shipbuilder; and in June 1833 the following agreement was entered into:—"Particulars and description of a new ship, about one-third built, in the yard of J. L.;" then followed a description of the length, breadth, and depth of ship, the number of tons she was to carry, and the timbers, and particulars of everything she was to be built of and supplied with, "for the sum of £1756, and payment as follows, opposite each respective name." This agreement was signed by L.; and, after his signature, followed these words, "We, the undersigned, hereby agree to take shares in the before-mentioned vessel, as set opposite to our respective names, and also the mode of payment." This was signed by several persons, for different shares, and at different times; and, among the rest, by one individual in October 1833, for one-fourth. Below these signatures was written:—"14th July 1833.—I hereby agree to accept the above price and mode of payment." The individual who had signed in October 1833, for one-fourth, proved payment by bills for his share, before the bankruptcy of L., the builder. A certain company had also signed for one-fourth, and of that company one H. was a member, and used to go and look at the vessel when building, and occasionally found fault with the work, which was improved in consequence; and L., the builder, told his foreman to act under the directions of H. At the time of the builder's bankruptcy, the frame of the vessel was in his building-yard, in an unfinished state; and, after his bankruptcy, some of his men continued to work on her, and received their money from H.; but, under these circumstances, the court held, that the property of the one-fourth had not passed to the individual who subscribed the agreement in October 1833.[2]

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[1] Clark *v.* Spence, 4 Ad. and El. 448.
[2] Laidler *v.* Burlinson, 2 M. and W. 602.

And a shipbuilder in Nova Scotia conveyed, by bill of sale in absolute and unqualified terms, a ship he was then building, with all the masts, &c., which might belong or appertain to the ship when completed, to certain parties, as a security for past and future advances; the builder registered the ship in name of these parties, and stated them in the builder's certificate to be the owners; but he afterwards prevailed on the customs officers to cancel this registry, and had her registered in his own name, and then sold her to other parties, who took possession, completed her, and sent her with a cargo to Liverpool: the first parties having demanded the ship, and, upon refusal of the second parties to deliver her, brought an action for her value, in which it was held:—(1.) That the Registration Acts being merely for the purpose of giving a vessel the privileges of a British ship, the builder may convey her, and the property will belong to the purchaser, without regard to these Acts. (2.) That as the bill of sale was given as a security for the advance of money, which it would not be unless something had passed, and there being words of present sale in the first part,—the property in the vessel, as it was at the time of the sale, passed to the first parties; and although the words of the subsequent part showed that the parties also intended to pass the property in the vessel when completed, which these words did not do, yet these subsequent words did not restrain the operative words in the first part, so as *not* to pass the property in the ship as it then existed; and, according to the Chief-Justice Jervis, the certificate of the builder, stating the first parties to be owners, would be construed as showing the true and legal ownership.[1]

In Woods *v.* Russell, before cited, the price was to be paid according to the progress of the work,—part when the keel was laid, and part when they were at the light planks; and, in delivering judgment, Lord C.-J. Abbot said:—"The payment of these instalments appears to us to appropriate specifically" (peculiarly and specially) "to the defendant (the employer) the very ship so in progress, and to vest in the defendant a property in that ship, and that, as between him and the builder, he is entitled to insist upon the completion of that very ship; and that the builder is not entitled to require him to accept any other." In that case, the builder had bought a rudder and cordage for the ship, which were in his yard, and which the employer's servants, by his directions, took out of the yard on 2d July, subsequent to the builder having committed an act of bankruptcy; but it was held that the rudder and cordage, though not actually attached at the time of the bankruptcy, stood on the same footing with the ship: the Lord C.-J. stating, that "though these were not actually attached to the ship at the time his act of bankruptcy was committed, they seem to us to stand upon the same footing with the ship, and that, if the employer was entitled to take the ship, he was also entitled to take the rudder and cordage as parts thereof." From this decision it might reasonably be inferred, that any article specially intended to be used, constructed, and wrought up in the building of the particular ship then in course of building would pass with the property of that ship. But this part of the judgment in Woods *v.* Russell was not approved by the Court of Appeal in the case of Wood *v.* Bell, 6 E. and B. 355. There it was held that engines and

[1] Read *v.* Fairbanks, 17 Jur. 918.

angle-irons in course of preparation for, and timbers actually prepared and ready, but not attached to, the steamer, did not pass to the purchaser, who had paid.

But all such questions as these now detailed ought to be carefully excluded by the written agreement of the parties; and this can be easily provided for. As, for instance, in an agreement *to build* a vessel, it ought to be specially declared, that, on the payment of the first instalment of the building price—whether that be at the keel-laying, or at any after stage, —the property of the vessel, as then existing, should be the employer's solely, and that, as the building of the vessel progressed, these augmentations should, in like manner, accresce and belong to the employer, he paying the contract instalments as these become due, and subject to the builder's right and security, as already mentioned. Or, should a partially constructed vessel be purchased in the yard of the builder, who is to complete the building, the written bargain should expressly declare, that the begun vessel, on payment of the agreed-on price, should belong solely to the purchaser; and similar measures ought to be adopted as now mentioned, according as the vessel proceeds to completion. And, though not an essential requisite, yet, in many cases it would be a prudent precaution on the part of the purchaser, when he pays the price,—or, at any rate, the first portion thereof,—to take public notarial possession of the vessel, so far as then finished, which is done by a notary public, in presence of witnesses, and is evidenced by his notarial instrument of possession. This might be the means of saving much after trouble and expense in any question with the builder's creditors.

III.—REGISTRY AND CERTIFICATE OF REGISTRY.

By section 30 of the Merchant Shipping Act, 17 and 18 Vict., cap. 104, the following officials are appointed to register British ships, and are termed registrars, for the purposes of that Act, viz.:—

1. At any port or any place in the United Kingdom or Isle of Man, approved by the Commissioners of Customs for the registry of ships,—the collector, comptroller, or other principal officer of customs for the time being.

2. In the islands of Guernsey and Jersey,—the principal officers of Her Majesty's customs, together with the governor, lieutenant-governor, or other person administering the government of such islands respectively.

3. In Malta, Gibraltar, and Heligoland,—the governor, lieutenant-governor, or other person administering the government of such places respectively.

4. At any port or place so approved by the Commissioners, within the limits, but not under the government of the East India Company, and at which no custom-house is established,—the collector of duties, together with the governor, lieutenant-governor, or other person administering the government.

5. At the ports of Calcutta, Madras, and Bombay, the master-attendants, and at any other port or place so approved as aforesaid, within the limits, and under the government of the East India Company, the collector of duties, or any person of six years' standing in the civil service, who is appointed by any of the Governments to act for this purpose.

6. At every other port or place so approved as aforesaid, within Her Majesty's dominions abroad,—the collector, comptroller, or other principal officer of customs, or of the navigation laws; and, if there is no such officer resident at each such port or place, the governor, lieutenant-governor, or other person administering the government of the possession in which any such port or place is situated.

The governor, lieutenant-governor, or other person administering the government in any British possession, where any ship is registered under authority of the Act, is to be considered, with regard to the performance of any act or thing relating to the registry of a ship, or any interest therein, as occupying in all respects the place of the Commissioners of Customs; and, in any place where there is no justice of the peace, any British consular officer is authorised to take any declaration required or permitted by the Act to be made in the presence of a justice of the peace.[1]

Every registrar keeps a book called "The Register Book," and enters therein the after-mentioned particulars required to be registered,[2] and the port at which any British ship is registered for the time being is considered the port to which she belongs.[3]

Prior to registration of a British ship the following rules as to marking the name and other particulars have to be attended to:—

The ship must be permanently and conspicuously marked to the satisfaction of the Board of Trade, as follows:—

1. Her name must be marked on each of her bows, and her name, and the name of her port of registry, must be marked on her stern, on a dark ground in white or yellow letters, or on a light ground in black letters, such letters being of a length not less than four inches, and of proportionate breadth.

2. Her official number and the number denoting her registered tonnage must be cut in on her main beam.

3. A scale of feet denoting her draught of water must be marked on each side of her stem and of her stern-post in Roman capital letters or in figures, not less than six inches in length, the lower line of such letters or figures to coincide with the draught line denoted thereby. Such letters or figures must be marked by being cut in and painted white or yellow on a dark ground, or in such other way as the Board of Trade may from time to time approve.

The Board of Trade may, however, exempt any class of ships from these requirements, or any of them.

If the scale of feet showing the ship's draught of water is in any respect inaccurate, so as to be likely to mislead, the owner of the ship incurs a penalty not exceeding £100.

The marks hereby required must be permanently continued, and no alteration is to be made therein, except in the event of any of the particulars thereby denoted being altered in the manner provided by the Merchant Shipping Acts.

Any owner or master of a British ship who neglects to cause his ship to be marked as aforesaid, or to keep her so marked, and any person who conceals, removes, alters, defaces, or obliterates, or suffers any person

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[1] Sec. 31. [2] Sec. 32. [3] Sec. 33.

under his control to conceal, remove, alter, deface, or obliterate, any of the said marks, except in the event aforesaid, or except for the purpose of escaping capture by an enemy, for each offence incurs a penalty not exceeding £100, and any officer of customs on receipt of a certificate from a surveyor or inspector of the Board of Trade that a ship is insufficiently or inaccurately marked, may detain the same until the insufficiency or inaccuracy has been remedied.[1]

The Merchant Shipping Act, 1876, directs certain other marks, indicating the deck and load lines, to be placed on British ships; but as such marks are intended to be used for the better prevention of accidents, and not for the purpose of registration, they are treated of elsewhere.

With respect to the names of British ships, the following rules have to be observed :—

1. A ship must not be described by any name other than that by which she is for the time being registered.

2. No change may be made in the name of a ship without the previous permission of the Board of Trade, signified in writing under their seal, or under the hand of one of their secretaries or assistant secretaries. Upon such permission being granted, the ship's name must forthwith be altered in the register-book, in the ship's certificate of registry, and on her bows and stern : and if in any case it is shown to the satisfaction of the Board of Trade that the name of any ship has been changed without such permission, they will direct that her name be altered into that which she bore before such change, and the name must then be altered in the register-book, in the ship's certificate of registry, and on her bows and stern accordingly.

3. Where a ship having once been registered has ceased to be so registered, no person, unless ignorant of such previous registry (proof whereof shall lie on him), can apply to register, and no registrar may knowingly register, such ship, except by the name by which she was previously registered, unless with the permission of the Board of Trade, granted as aforesaid.

Every person who acts, or suffers any person under his control to act, in contravention of these rules, or who omits to do, or suffers any person under his control to omit to do, anything required by them, for each offence incurs a penalty not exceeding £100, and any principal officer of customs may detain the ship until the rules are complied with.

Application for a change of name is to be made in writing to the Board of Trade. If the Board are of opinion that the application is made on reasonable grounds, they may entertain the same, and they thereupon require notice thereof to be published in such form and manner as they think fit.[2]

And where a foreign ship, not having at any previous time been registered as a British ship, becomes a British ship, no person can apply to register, and no registrar may knowingly register such ship, except by the name which she bore as a foreign ship immediately before becoming a British ship, unless with the permission of the Board of Trade, granted in manner hereinbefore mentioned.

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[1] 36 and 37 Vict., cap. 85, sec. 3.

[2] 34 and 35 Vict., cap. 110, sec. 6.

Any person acting, or suffering any person under his control to act, in contravention of this rule, for each offence incurs a penalty not exceeding £100.[1]

Application for the registry of a ship must be made, where the owners are individuals, by the person requiring to be registered as owner, or, if more than one, by one or more of them, or by his or their duly authorised agent, and when the owners are bodies corporate, by their duly authorised agent. If the agent be appointed by individuals, his authority must be proved by writing under the hands of those by whom he is appointed, —or, if by a body corporate, by some written document under the common or corporate seal of that body.[2]

And, before registry, the ship must be surveyed by the surveyor, who, before registry, delivers to the registrar a certificate in the form of Schedule A, annexed to the Act (Appendix, No. 1), in which are particularly stated the tonnage, build, and other required particulars descriptive of that identical ship.[3] The tonnage must be ascertained in the manner and according to Rules I., II., III., or IV., specially prescribed by sections 21, 22, 23, and 24 of the Act. But the owner of a ship, which has been measured under Rule II., can, at any after period, apply to the Board of Trade to have his ship measured under Rule I.; and, on the owner paying a fee not exceeding 7s. 6d. for each athwart division, the Board can direct the ship to be measured, and the number marking the register tonnage will be altered agreeably thereto.[4] The tonnage, so ascertained and registered, is thenceforth held to be the tonnage of that ship; and must be repeated in every subsequent registry thereof, unless any alteration is made in the form or capacity of the ship,—or unless it is discovered that the tonnage has been erroneously computed; and, in either of these cases, the ship must be re-measured, and her tonnage determined and ascertained according to the rules of section 26. But these rules do not make it necessary to alter the present registered tonnage of any British ship, registered before the Act came into operation, unless the owner desires to have the same re-measured according to these rules,—for which purpose he can apply to the Board of Trade, who thereupon, and upon payment of a sum not exceeding 7s. 6d. for each transverse (athwart) section, as they may authorise, can direct a re-measurement to be made, and the ship must be re-measured according to the rules in the Act, or according to such of them as may be applicable, and the number denoting the registered tonnage altered accordingly.[5]

The mode of measurement for tonnage of ships propelled by steam or other power is prescribed by Rule III., section 23, and according to the special directions there given; and steam-ships must be provided as to equipments as follows:—

1. Every steam-ship, of which a survey is required by the Act, must be provided with a safety-valve upon each boiler, so constructed as to be out of the control of the engineer when the steam is up, and if such valve is in addition to the ordinary valve, to have an area not less, and a pressure not greater, than the area of, and the pressure on, that valve.

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[1] 36 and 37 Vict., cap. 85, sec. 5.
[2] 17 and 18 Vict., cap. 104, sec. 35.
[3] Sec. 36.
[4] 18 and 19 Vict., cap. 91, sec. 14.
[5] 17 and 18 Vict., cap. 104, sec. 27.

2. Every sea-going steam-ship employed to carry passengers must have her compasses properly adjusted from time to time, such adjustment, in the case of ships surveyed as mentioned in the Act, being made to the satisfaction of the shipwright surveyor, and according to such regulations as may be issued by the Board of Trade.

3. Every sea-going steamship, unless used solely as a steam-tug, must be provided with a hose, adapted for the purpose of extinguishing fire in any part of the ship, and capable of being connected with the engines.

4. Every sea-going passenger steam-ship and every emigrant ship must be provided to the satisfaction of the Board of Trade—(1.) With means for making the signals of distress specified in the 1st Schedule to the Merchant Shipping Act, 1873, or in any rules substituted therefore, including means of making flames on the ship which are inextinguishable in water,—or, with such other means of making signals (if any) as may have previously been approved by the Board of Trade: (2.) With a proper supply of lights inextinguishable in water, and fitted for attachment to life-buoys.

5. Every home-trade ship employed in carrying passengers by sea must be provided with such shelter for the protection of deck-passengers (if any) as the Board of Trade, having regard to the nature of the passage, the number of deck-passengers to be carried, the season of the year, the safety of the ship, and the circumstances of the case, may require.

And if any such steam-ship plies or goes to sea, from any port in the United Kingdom, without being so provided as before required, then, for each default in any of the above requisites, the owner, if he appears to be in fault, incurs a penalty not exceeding £100, and the captain, if he appears to be in fault, incurs a penalty not exceeding £50.[1]

If any person places undue weight on the safety-valve of any steam-ship, or, in the case of steam-ships surveyed in terms of the Act, increases such weight beyond the limits fixed by the engineer-surveyor, in addition to any other liabilities he may incur by so doing, he incurs a penalty not exceeding £100.[2]

The following rules are to be observed with respect to entries in the register-book:—(1.) The property in a ship is divided into sixty-four shares. (2.) Subject to the provisions with respect to joint-owners and owners by transmission, not more than thirty-two individuals are to be registered, at the same time, as owners of any one ship; but this rule does affect the beneficial title of any number of persons, or any company represented by, or claiming under or through, any registered owner or joint-owner. (3.) No person can be registered as owner of any fractional part of a share in a ship; but any number of persons, not exceeding five, may be registered as joint-owners of a ship, or of a share or shares therein. (4.) Joint-owners are considered as constituting one person only, as regards the number of persons entitled to be registered as owners, and are not entitled to dispose, separately and individually, of any interest in any ship, or in any share or shares therein, in respect of which they are registered. (5.) Any body corporate can be registered as owners by its corporate name.[3]

No person can be registered as owner of a ship, or any share therein, until he has made and subscribed the declaration in the form B, in the

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[1] Sec. 301 of the principal Act, and sec. 21 of 39 and 40 Vict., cap. 80.
[2] Sec. 302.
[3] Sec. 37.

Schedule annexed to the Act, referring to the ship, as described in the certificate of the surveyor as after mentioned, and containing the following particulars:—

1. A statement of his qualifications to be an owner of a share in a British ship.

2. A statement of the time when, and the place where, the ship was built; or (if foreign-built, and the time and place of building not known) a statement that she is foreign-built, and that he does not know the time and place of her building; and, in addition thereto,—in the case of a foreign ship,—a statement of her foreign name; or,—in the case of a ship condemned,—a statement of the time, place, and court at and by which she was condemned.

3. A statement of the name of the master.

4. A statement of the number of shares in the ship of which he is entitled to be registered as owner.

5. A denial that, to the best of his knowledge and belief, any unqualified person, or body of persons, is entitled, as owner, to any legal or beneficial interest in that ship, or any share therein.

This declaration of ownership must be made and subscribed in presence of the registrar, if the declarant reside within five miles of the custom-house of the port of registry; but, if beyond that distance, in presence of any registrar or of any justice of the peace.[1]

No body corporate is entitled to be registered as owner of a ship, or of any share therein, until the secretary, or other duly appointed public officer of that body, has made and subscribed, in presence of the registrar of the port of registry, a declaration in the form C, in the Schedule annexed to the Act, referring to the ship as described in the certificate of the surveyor, and containing the following particulars:—

1. Such a statement of the constitution and business of that body as prove it to be qualified to own a British ship.

2. A statement of the time and place where the ship was built, or (if foreign-built, and the time and place of building not known) a statement that she is foreign-built, and that he does not know the time or place of her building; and, in addition thereto,—in the case of a foreign ship,—a statement of the foreign name; or,—in case of a ship condemned,—a statement of the time, place, and court at and by which she was so condemned.

3. A statement of the name of the master.

4. A statement of the number of shares of which such body corporate is owner.

5. A denial that, to the best of his knowledge and belief, any unqualified person, or body of persons, is entitled, as owner, to any legal or beneficial interest in such ship, or any share thereof.[2]

In addition to this declaration of ownership at first registry, the following evidence must be produced:—

1. In the case of a British-built ship, a certificate (which the builder is required by the Act to grant under his hand), containing a true account of the proper denomination, and of the tonnage of the ship, as estimated by him, and of the time when and the place where the ship was built, together with the name of the party (if any) on whose account he has built

[1] Sec. 38. [2] Sec. 39.

the same; and, if any sale or sales have taken place, the bill or bills of sale under which the ship or share therein has become vested in the party requiring to be registered as owner.

2. In the case of a foreign-built ship, the same evidence as in the case of a British-built ship, unless the person requiring to be registered as owner, or, in the case of a body corporate, the duly appointed officer, declares that the time or place of her building is unknown, or that the builder's certificate cannot be procured, in which case there is required only the bill or bills of sale under which the ship or share therein became vested in the party requiring to be registered as owner thereof.

3. In the case of a ship condemned by any competent court, an official copy of the condemnation of that ship.[1]

It is to be recollected, that, in making the declarations before required, and any other declarations made in presence of or produced to a registrar, agreeably to this second part of the Merchant Shipping Act, 1854, or in any document or other evidence produced to a registrar, any person who makes, or assists in making, or procures to be made, any false statement as to the title to, or ownership of, or interest in any ship, or in any share or shares in any ship, or who sets forth, produces, or makes use of any declaration or document having any such false statement, that person is guilty of a misdemeanour. (See *post*, NATIONAL CHARACTER.)

When the foregoing requisites to the due registry of a ship have been complied with, the registrar enters in the register-book the following particulars relating to such ship:—

1. The name of the ship and of the port to which she belongs.

2. The details as to her tonnage, build, and description, comprised in the certificate by the surveyor.

3. The several particulars as to her origin, stated in the declaration or declarations of ownership.

4. The names and descriptions of her registered owner or owners, and, if there is more than one, the proportions in which they are interested in the ship.[2]

But in the register-book, no notice or declaration of any express, implied, or constructive trust, trust purpose, or condition can be entered, or can be taken, allowed, or admitted by the registrar; and always under any rights and powers appearing by the register-book to be in any other party, the registered owner of any ship, or share therein, has power absolutely to dispose, as after mentioned, of his ship or share, and to give effectual receipts for any money paid or advanced as the purchase-money or consideration.[3]

Subject, however, to this last provision, equities may be enforced against owners or mortgagors (Merchant Shipping Act Amendment Act, 1862, 25 and 26 Vict., cap. 63, sec. 3).

Upon the registry of any ship being thus completed, the registrar grants a certificate of registry in the form D, annexed to the Act, containing the following particulars:—

1. The name of the ship, and of the port to which she belongs.

2. The details as to her tonnage, build, and description, comprised in the certificate by the surveyor.

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[1] Sec. 40. [2] Sec. 42. [3] Sec. 43.

3. The several particulars as to her origin, stated in the declaration or declarations of ownership.

4. The names of her registered owner or owners; and, if there is more than one such owner, the proportions in which they are respectively interested, endorsed upon the certificate.[1]

The certificate of registry must be used only for the lawful navigation of the ship, and is not liable to be withheld, on account of any title, lien, charge, or interest whatever, which any owner, mortgagee, or other person may have, or claim to have, on or in the ship described in the certificate; and if any person, whether interested in the ship or not, refuses, on request, to deliver up the certificate, when in his possession or under his control, to the person, for the time being, entitled to the custody thereof, for the purposes of the lawful navigation of the ship, or to any registrar, officer of the customs, or other person legally entitled to require such delivery, any justice, by warrant under his hand and seal, or any court capable of taking cognisance of such matter, can cause the person so refusing to appear before him, and be examined touching such refusal. Unless it is proved to the satisfaction of the justice or the court that there was reasonable cause for such refusal, the offender incurs a penalty not exceeding £100; but if it is made to appear to the justice or the court that the certificate is lost, the party complained of must be discharged; and, therefore, the justice or the court certify that the certificate is lost.[2]

Under this section, it has been held, that a pledge of the certificate by the captain and sole owner is illegal and void, and that an action can be brought by him against the person detaining it, after a demand on him to return it for the navigation of the ship.[3] But the major owner and also ship's husband having required the captain and part-owner to deliver up the ship's certificate,—the ship being in her port of discharge, but not discharged, the intention being to dismiss the captain and appoint another, of which intention he did not know, and no other reason was assigned for requiring the certificate, which the captain refused to deliver up,—it was held that the captain was not liable to a penalty, as having refused to deliver the certificate to the person entitled to the custody thereof, for the purposes of navigation, without a reasonable ground of refusal.[4]

If the person charged with so detaining or refusing is proved to have absconded, so that the warrant of the justice or process of the court cannot be served upon him—or, if he persists in his refusal to deliver the certificate,—the justice or the court certify the fact,—and the same proceedings can then be adopted as if the certificate of registry had been mislaid, lost, or destroyed.[5] And, in this latter case, it is provided, that should the certificate of registry be found to be mislaid, lost, or destroyed, at any port of the United Kingdom,—when the ship is registered in the United Kingdom,—or at any port in a British possession,—when the ship is registered in that possession,—then, the registrar of the ship's port of registry can grant a new certificate of registry, in place of, and as a substitute for, her original certificate. But should the mislaying, losing, or destroying be found out at some other place than a port as aforesaid, then the captain, or some one knowing of the certificate being so mislaid, &c., must make a

[1] Sec. 44. [2] Sec. 50. [3] Wiley *v.* Crawford, 7 Jur. *n. s.* 943.
[4] Arkley *v.* Henzel, 8 El. and B. 82. [5] Sec. 51.

declaration before the registrar of any port having a British registrar, where she is at the time of, or at which she first arrived after this mislaying, &c.; and, in this declaration, the facts must be set forth as to the mislaying, &c., and the names and descriptions of the registered owners, to the best of that person's knowledge and belief. On this being done, the last-named registrar grants a *provisional certificate* in the appointed form, and inserts in it a statement of the circumstances under which it has been granted.[1] But, within ten days after the following arrival of the ship (if registered in the United Kingdom) at her port of discharge in the United Kingdom, —or, if registered elsewhere, at her port of discharge in the same British possession in which her port of registry is,—this provisional certificate must be delivered up to the registrar of that port of arrival, who, on that being done, grants a new one, as near to the appointed form as possible, —and, if the captain neglect to deliver up this certificate as before required, he incurs a penalty not exceeding £50.[2]

If the master or owner of a British registered ship uses, or attempts to use, for the navigation of that ship, a certificate of registry not legally granted in respect of his ship, he is guilty of a misdemeanour; and any commissioned officer, on full pay, in Her Majesty's military or naval service, or any British officer of customs, or any British consular officer, can seize and bring such ship for trial and sentence before the High Court of Admiralty in England or Ireland, or any court having Admiralty jurisdiction in Her Majesty's dominions. If that court is of opinion that such use, or an attempt at such use, has taken place, it pronounces the ship, with her tackle, apparel, and furniture, forfeited to Her Majesty, and can award such portion of the proceeds arising from the sale thereof as it may think just to the officer so bringing in the same for adjudication.[3]

When a British registered ship is either actually or constructively lost, taken by the enemy, burnt, or broken up,—or, when, by reason of having been conveyed to persons not qualified to be owners of British ships, or any other matter or thing, that registered ship ceases to be a British ship, the owner or owners thereof, or any share therein, must, immediately upon obtaining knowledge of such occurrence, give notice to the registrar at the ship's port of registry, who enters the circumstances in his register-book. On any of the events aforesaid, and when the certificate is not lost or destroyed, if the particular event happens in port, then immediately thereafter, or, if that event happens elsewhere, then, within ten days after his arrival in port, the captain must deliver the ship's certificate of registry to the registrar at that port, or, if there is not a registrar at it, to the British consular officer there, and the registrar (if not himself the registrar of the ship's port of registry) or the consular officer, straightway forward this certificate to the registrar of the ship's port of registry. And every owner and captain failing or omitting, without a reasonable cause, to obey the requirements of this section, incurs for each offence a penalty not exceeding £100.[4]

And when a ship has ceased to be registered as a British ship by reason of having been wrecked or abandoned, or for any reason other than capture by the enemy or transfer to a person not qualified to own a British ship, such ship shall not be re-registered until she has, at the expense of the applicant for re-registration, been surveyed by one of the surveyors appointed

[1] Sec. 48. [2] Sec. 49. [3] Sec. 52. [4] Sec. 53.

by the Board of Trade, and certified by him to be seaworthy (Merchant Shipping Act, 1873, 36 and 37 Vict., cap. 85, sec. 6).

When, at a foreign port, a ship becomes the property of parties qualified to be the owners of a British ship, upon the application of the captain the British consular officer resident at that port grants him a *provisional certificate*, stating—(1.) The name of the ship; (2.) the time and place of purchase, and the names of her purchasers; (3.) the name of her captain; and (4.) the fullest particulars of her tonnage, build, and description he can obtain; and the consular officer sends a copy of his certificate to the Registrar-General of Seamen and Shipping at London. This certificate has the same efficacy as a certificate of registry to the end of six months, or such time earlier as the ship arrives at a port having a British registrar,—but, on the ship so arriving, or at the end of six months, this provisional certificate is null.[1]

But a risk and danger may attend the purchase of a ship or shares, either at a foreign port, or at a port in a British possession, as happened in the following case:—Two parties were the part-owners of a ship, the one, A, of 48–64ths, and the other, B, of the remaining 16–64ths, and the ship sailed from her home port under command of B, with her certificate of registry, and B had a power of attorney from A, authorising him to sell A's shares. When the ship was at sea, A mortgaged his shares of the ship, and all her future freight, to third parties, whose mortgage was duly registered, but who had no notice of the power of attorney that had been granted by A to B. Thereafter, at Sydney, B sold the ship (his own shares, and also A's, under the power of attorney) and her cargo to C, who had no notice of the mortgage granted by A, and the ship was registered of new at Sydney in name of C, who, at his own expense, freighted her with a new cargo for London (not her home port), where she arrived without having been at her home port, and the mortgagees of A took possession of the ship and cargo in the London Docks, and gave notice, at all the wharfs, of their claims to 48–64ths of the ship and freight: it was held, that A's mortgagees had the better title to the 48–64th shares of both the ship and freight, and that, under the circumstances, they had properly taken possession of them.[2]

The certificate of registry, being only to be "used for the lawful navigation of the ship" (sec. 50), is not, by itself, proper evidence of any right of property, or of mortgage, in or over the ship to which it belongs,—and this must be instructed by duly authenticated copies from the register-book itself. The custody of the ship's certificate is intrusted to the duly appointed captain for the time being, who, if he refuses to deliver up that certificate for the purposes aforesaid, can be proceeded against under section 50. But the certificate of registry may be pledged or deposited, even by an unregistered owner, in security of advances for the use of the ship, though the holder can also be proceeded against, under the same section, for its detention.

IV.—TRANSFERS AND TRANSMISSIONS.

The deed or instrument by which a ship or share of a ship is conveyed from one living person to another is termed a *transfer*; and the means by

[1] Sec. 54. [2] Cate *v.* Irving, 16 Jur. 161.

which the right and interest of a deceased or otherwise incapacitated owner are passed on to the legal representative of that owner or part-owner are termed a *transmission.*

1.—*Transfers.*

A registered ship, or any share therein, disposed of to persons properly qualified, must be conveyed over by an instrument, partly printed and partly written, called a bill of sale; and in this bill of sale is inserted the description of the ship, as in the surveyor's certificate, or some other description sufficient to identify the ship, to the satisfaction of the registrar. The bill of sale is in the form E in the Schedule to the Act, or as near thereto as circumstances permit, and it must be subscribed by the person conveying, in presence of, and be attested by, one or more witnesses.[1] This bill of sale for the disposal or transfer of any ship, or share or shares thereof, or interest therein, can only be made and contain the particulars in the form E in the Schedule annexed to the Act.[2]

Until the person to whom the transfer is granted makes a declaration in the form of Schedule F, stating his qualification to be registered as owner of a share in a British ship, and containing a denial, like as the denial required in a declaration of ownership by an original owner, he cannot be registered as owner of a ship or share in it,—and no body corporate is entitled to be registered as transferee of a ship, or any share therein, until the secretary, or other duly appointed public officer of such body corporate makes a declaration in the form marked G, stating the name of such body corporate, and such circumstances of its constitution and business as prove it qualified to own a British ship, and containing a denial similar to the denial required in a declaration of ownership made on behalf of a body corporate. In the case of an individual, this declaration must be made, if he reside within five miles of the custom-house of the port of registry, in presence of the registrar; but, if beyond that distance, in presence of any registrar, or of any justice of the peace; and, in the case of a body corporate, the declaration must be made in presence of the registrar of the port of registry.[3]

Every bill of sale for the transfer of a registered ship, or of any share therein, when duly subscribed and executed, must be produced to the registrar of the port at which the ship is registered, together with the declaration before required by the transferee; and thereupon the registrar enters in the register-book the name of the transferee as owner of the ship or share in the bill of sale, and endorses on the bill of sale the fact of this entry having been made, with the date and hour thereof; and all bills of sale of any ship or shares must be entered in the register-book in the order of their production to the registrar.[4]

When a change takes place in the registered ownership of a ship, at a time when the ship is at her port of registry, the captain must forthwith deliver the certificate of registry to the registrar, and he endorses thereon a memorandum of that change; but if the change occurs during the ship's absence from her port of registry, then, upon her first return to her port of registry, the captain must deliver the certificate to the registrar, who

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[1] Sec. 55.
[2] Liverpool Borough Bank *v.* Turner, 3 L. T. *n. s.* 494.
[3] Sec. 56.
[4] Sec. 57.

endorses thereon a like memorandum of the change. Or, if she previously arrive at any port where there is a British registrar,—upon the latter being advised by the registrar of her port of registry of the change having taken place,—he endorses a like memorandum on the certificate, and, for this purpose, can require the certificate to be delivered to him, so that the ship be not thereby detained. Any captain who fails to deliver to the registrar the certificate as required by this section incurs a penalty not exceeding £100.[1]

2.—Transmissions.

If the property in a ship, or share therein, comes to be passed on, or transmitted, in consequence of the death, or bankruptcy, or insolvency of any registered owner, or in consequence of the marriage of any female registered owner, or by any lawful means other than by a transfer according to the foregoing provisions, such transmissions must be authenticated by a declaration of the person to whom the same has been transmitted, in the form of Schedule H, and containing the several statements required in the declaration of a transferee, or as near thereto as circumstances permit; and in addition a statement of the manner in which, and the party to whom, such property has been transmitted; and this declaration must be made and subscribed, if the declarant resides at or within five miles of the custom-house of the port of registry, in presence of the registrar; but, if beyond that distance, in presence of any registrar or justice of the peace.[2]

If the transmission has taken place in consequence of the bankruptcy or insolvency of any registered owner, this declaration must be accompanied with such evidence as may for the time being be receivable in courts of justice as proof of the title of parties claiming under bankruptcy or insolvency; or, if the transmission has taken place in consequence of the marriage of a female owner, this declaration must be accompanied by a copy of the register of her marriage, or other legal evidence of the celebration thereof, and must declare the sameness of the said female owner; and if the transmission has taken place in consequence of any testamentary instrument, or by intestacy (succession without a will), then—in England, Wales, and Ireland—the said declaration must be accompanied by the probate of the will, or the letters of administration, or an official abstract therefrom; in Scotland, or in any British possession,—by the will, or any copy thereof, that may be evidence by the laws of Scotland or of such possession; or by letters of administration, or any copy thereof; or by such other document as may, by the laws of Scotland, or of such possession, be receivable in the courts of judicature thereof, as proof of the person entitled upon an intestacy.[3]

On receiving the declaration, accompanied as aforesaid, the registrar enters in the register-book the name of the person or persons entitled, under such transmission, as the owner or owners of the ship, or share, in respect of which such transmission has taken place; and such persons (if more than one), however numerous, are considered as one person only, as regards the rule before mentioned (secs. 37 and 39), as to the number of persons entitled to be registered owners.[4] The registrar retains of the

[1] Sec. 45. [2] Sec. 58. [3] Sec. 59. [4] Sec. 60.

documents produced to him, the surveyor's certificate (sec. 36), the builder's certificate (sec. 40), the official copy of any sentence of condemnation by a competent court (sec. 40), and all the before-required declarations of ownership.[1]

If any one having an interest in any ship or share is, by reason of infancy, insanity, or other inability, incapable of making any declaration, or doing any act required or permitted by such incapable person in respect of registry, then the guardian or committee of that incapable—or, if there be none, any person appointed by any competent court or judge—can make the requisite declaration, or a declaration as nearly corresponding thereto as circumstances permit, and can legally do any act in the name and on behalf of the incapable; and all acts done by such substitute are as effectual as if done by the person for whom he is substituted.[2]

3.—*Transfer by Order of Sale.*

When any property in a ship, or share, becomes vested, by transmission, on the death of any owner, or on the marriage of any female owner, in any person not qualified to be the owner of British ships,—if the ship is registered in England or Ireland, the Court of Chancery,—if in Scotland, the Court of Session,—or if in any British possession, any court possessing the principal civil jurisdiction within such possession,—upon an application made by or on behalf of such unqualified person, can order a sale to be made of the property so transmitted, and can direct the proceeds of such sale, after deducting the expenses thereof, to be paid to the person entitled under such transmission, or otherwise as the court may direct; and it is in the discretion of such court to make or refuse any such order for sale, and to annex thereto any terms or conditions, and to require any evidence in support of such application, as it may think fit, and, generally, to act in the premises in such manner as the justice of the case requires.[3]

Every order for a sale made by such court must contain a declaration granting the right to transfer the ship, or share, so to be sold, to some person or persons named by the court; and the nominee or nominees are, therefore, entitled to transfer such ship or share, in the same manner, and to the same extent, as if he or they were registered owner or owners of the same; and every registrar must obey the requisition of such nominee or nominees in respect of any transfer, to the same extent as he would be compellable to obey the requisition of any registered owner or owners of such ship or share.[4]

Every such application for sale must be made within four weeks after the occurrence of the event on which such transmission has taken place, or within such further time as the court may allow, not exceeding, in any case, one year from the date of such occurrence; and, in the event of no such application being made within the foresaid period,—or of the court refusing to accede thereto,—the ship or share so transmitted is thereupon forfeited in manner after mentioned, with respect to interests acquired by unqualified owners in ships using the British flag, and assuming the British character.[5] (See *post*, VIII. NATIONAL CHARACTER.)

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[1] Sec. 61. [2] Sec. 99. [3] Sec. 62. [4] Sec. 63. [5] Sec. 64.

When any person is beneficially interested (otherwise than as a registered mortgagee) in any ship or share registered in name of some other person as owner, the person so interested, as well as the registered owner, is liable to all pecuniary penalties imposed by the Merchant Shipping Act, or by any other Act, on owners of ships or shares therein,—so, nevertheless, that proceedings may be taken for the enforcement of these pecuniary penalties against both or either of these parties, with or without forcing the other of them.[1]

It is lawful, in England or Ireland, for the Court of Chancery,—in Scotland, for the Court of Session,—and, in any British possession, for any court possessing the principal civil jurisdiction within such possession,—without prejudice to the exercise of any other power such court may possess,—on the summary application of any interested person,—made either *ex parte* (on one side), or upon service of notice on any other person, as the court may direct,—to issue an order prohibiting, for a time to be named in such order, any dealing with a ship or share which may become vested, on transmission by death or marriage, in any unqualified person; and it is in the discretion of the court to make or refuse any such order, and to annex thereto any terms or conditions it may think fit, and to discharge such order, when granted, with or without costs, and, generally, to act in the premises in such manner as the justice of the case requires; and every registrar, without his being made a party to the proceedings,—upon being served with such order, or an official copy thereof,—must obey the same.[2] The powers conferred upon the Court of Chancery by sections 62 to 65 of the principal Act were extended to the High Court of Admiralty by 24 Vict., cap. 10, sec. 12.

V.—MORTGAGES.

Under former Registry Acts, the following decisions were pronounced as to mortgages of vessels, and the rights of mortgagees; and the principles of these decisions may still be useful,—as illustrative of the enactments in the present Merchant Shipping Act:—

Thus, in one case, two ships, and sixteen sixty-four parts or shares of a third, were mortgaged, while at sea, by bill of sale, which was registered by the officers of customs at the port to which they belonged, before they returned to port. One ship returned, but no endorsement of the bill of sale was made on the certificate; after being insured, she sailed again within thirty days, and was lost. By a bill of sale of a subsequent date, to which the mortgagees were parties,—after reciting the prior mortgage,—the same mortgager assigned to a third party the same ships and shares, with the policies effected on two of them, and the sum payable by certain charterers for the hire of the third, with all his equity of redemption in said ships, freights, &c., subject to the prior mortgage and power of sale. This bill of sale was also registered before the return of any of the ships to port, and the mortgagor subsequently became bankrupt. Two of the ships returned to port, and their certificates of registry were duly endorsed within thirty days, with the two bills of sale, in the order of their dates; and it was held, that the second bill of sale was valid,

[1] Sec. 100. [2] Sec. 65.

under sections 31 and 37 of the 6 Geo. IV., cap. 110, against the assignees of the bankrupt, as to the interests in the ships, which it assigned to the mortgagees, notwithstanding the mortgagor's bankruptcy occurred before the expiry of thirty days after the ship's arrival in port, and also as to the policies of insurance and moneys due under the charter-parties.[1]

It was doubted whether a mortgagee could insure the full value of the ship over which his mortgage extended; and, in a case where a mortgagee received £3700, under the policies effected by him on a ship valued at £3980, and which had been lost,—and one set of the underwriters having brought an action against him, to recover back their proportion of the sum paid above £300, the amount of the mortgage:—the question was, Whether the mortgagee had received more than the actual value of the ship insurable by him? and it was held, that it had been properly submitted to the jury, whether, in effecting the policies, the mortgagee meant to insure his own interest only, or that of the mortgagor also?—a mortgagee, at least since the 6 Geo. IV., cap. 110, not being an owner to a greater extent than that of the value mortgaged, and the mortgagor continuing as owner.[2]

Where a ship was mortgaged, and afterwards sailed from England to the West Indies, and returned to the Thames with a cargo, and at Gravesend, near the end of the voyage, she was taken possession of by the mortgagee:—it was held, that the accruing freight belonged to the mortgagee, as incident to the property of the ship, notwithstanding section 45 of the 6 Geo. IV., cap. 110, provided against the mortgagee being deemed an owner, except so far as might be necessary to obtain payment of his debt.[3]

Where the managing owner of a ship mortgaged his share to a third party, who procured his transfer to be duly endorsed on the certificate of registry;—but the 4 Geo. IV., cap. 41, being in force at the date of the transfer, it did not appear on the registry or endorsement that it was by way of mortgage;—the managing owner continued in possession as before, and the mortgagee did not take possession, nor interfere in the concerns of the vessel:—it was held, that he was not liable for repairs and necessaries done and supplied in pursuance of the orders of the managing owner.[4]

Also, where a ship was mortgaged and the mortgage duly registered, and the names of the mortgagees endorsed on the certificate, but the mortgagor remained in possession, and employed a captain, who saw the names of the mortgagees on the certificate as registered owners, but who had no communication with them regarding the concerns of the ship, and was not introduced to them, nor received any orders from them:—it was held, that the captain could not maintain an action against these mortgagees for wages and disbursements.[5]. The mere mortgagee of a vessel, who did not take possession, was not liable for necessaries supplied for the use of the vessel previous to a transfer, upon the order of the captain, who gave the name of the original owner as owner.[6] And if a person was mortgagee as well as broker of a ship and gave directions for repairs to be done:—in an action by the tradesman, the question for the jury was, Whether he gave these directions in his character of broker, or as a person interested in the vessel?[7] But if the mortgagee has both the possession

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[1] *Ex parte* Jones, 2 Tyrwh. 686.
[2] Irving *v.* Richardson, 2 B. and Ad. 196.
[3] Kerswell *v.* Bishop, 2 Tyrwh. 603.
[4] Briggs *v.* Wilkinson, 7 B. and C. 30.
[5] Annett *v.* Carstairs, 3 Camp. 354.
[6] Twentyman *v.* Hart, 1 Starkie, 366.
[7] Castle *v.* Duke, 5 C. and P. 359.

and management of the vessel, there can be little doubt he will be liable for furnishings in a home port, made on the authority of the captain.[1]

By the Merchant Shipping Act it is enacted (sec. 66), that a registered ship, or any share therein, can be made security for a loan, or other valuable consideration (cause or reason), and the instrument creating such security (termed a "mortgage") is in the form I in the Schedule annexed, or as near to it as circumstances permit;[2] and should the instrument of mortgage be made in any form, or contain any particulars, other than the prescribed form and particulars of the approved form I, no registrar can be required to record the same, without the express directions of the Commissioners of Customs;[3] and it has been held that mortgages of ships can only be made in the manner prescribed by the Merchant Shipping Act.[4] On producing the mortgage deed to the registrar of the port at which the ship is registered, he records the same in the register-book of the ship;[5] and every such mortgage must be recorded by the registrar in the order of time in which the same is produced to him for that purpose; and, by memorandum under his hand, the registrar notifies on the instrument of mortgage that the same has been recorded by him, stating the date and hour of such record.[5]

When any registered mortgage has been discharged, the registrar, on production of the mortgage deed, with a duly signed and attested receipt for the mortgage money thereon, makes an entry in the registry that that mortgage has been discharged; and, on this entry being made, the estate (property) which passed to the mortgagee belongs to the same person or persons in whom the same, having regard to any intervening acts and circumstances, would have belonged had there been no such mortgage.[6]

If there is more than one mortgage registered of the same ship or share, the mortgagees rank,—notwithstanding any express, implied, or constructive notice,—in priority, the one over the other, according to the date at which each instrument is recorded in the register-book, and not according to the date of each instrument itself.[7] But a mortgagee is not, by reason of his mortgage, held to be owner of a ship or share, nor does the mortgagor cease to be owner of such mortgaged ship or share, unless in so far as may be necessary for making the same good as a security for the mortgage debt.[8] And every registered mortgagee has full power of disposing of the ship or shares in respect of which he is registered, as if he were registered owner thereof, and to give effectual receipts for the purchase money; but if there are more persons than one registered as mortgagees of the same ship or share, no *subsequent* mortgagee can, unless under the order of some competent court, sell such ship or share, without the concurrence of every prior mortgagee.[9]

No registered mortgage of any ship, or share therein, is affected by any *act of bankruptcy* committed by the mortgagor after the date of recording that mortgage, notwithstanding the mortgagor, at the time of his becoming bankrupt, may have in his *possession and disposition* and be *reputed owner* of such ship or share thereof; and such mortgage is preferred to

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1 De Mattos *v.* Gibson, 1 J. and H. 79. 2 Sec. 66 of 17 and 18 Vict., cap. 104.
3 Sec. 11 of 18 and 19 Vict., cap. 91.
4 Liverpool Borough Bank *v.* Turner, 6 Jur. *n. s.* 935.
5 17 and 18 Vict., cap. 104, secs. 66, 67.
6 Sec. 68. 7 Sec. 69. 8 Sec. 70. 9 Sec. 71.

any right, claim, or interest in such ship or share thereof, which may belong to the assignee of the bankrupt.[1]

A registered mortgage of any ship, or share in a ship, can be *transferred* to any person, and the instrument of transfer must be in the form K in the Schedule; and on the production of this instrument, the registrar enters in the register-book the name of the transferee, as mortgagee of the ship, or shares therein mentioned, and records, by memorandum under his hand, on the instrument of transfer, that the same has been recorded by him,—stating the date and hour of record.[2] And if the interest of any mortgagee becomes transmitted in consequence of death, bankruptcy, or insolvency, or in consequence of the marriage of any female mortgagee, or by any lawful means other than by a transfer, such transmission must be authenticated by a declaration of the person to whom that interest has been transmitted, in the form L in the Schedule, and containing a statement of the manner in which, and the party to whom, such property has been transmitted; and this declaration must be made and subscribed in presence of the registrar,—if the declarant resides at or within five miles of the custom-house of the port of registry,—but, if beyond that distance, in the presence of any registrar or justice of the peace; and it must be accompanied by such evidence as is required by the Act (sec. 59, p. 15) to authenticate a corresponding transmission from one registered owner to another.[3] Upon the receipt of such declaration and evidence, the registrar will enter the name of the person entitled in the register-book.[4] In making the declaration required, it will be necessary to bear in mind the penalty imposed by section 9 of the 18 and 19 Vict., cap. 91, upon any person who, in any declaration, wilfully makes or assists in making, or procures to be made, any false statement as to the title, or ownership of, or interests in, a ship, or share or shares of a ship,—or who either produces or makes use of any declaration or document containing any such false statement, knowing the same to be false,—is thereby guilty of a misdemeanour.

It has been already seen, that the mortgage deed or instrument must be in the prescribed statutory form of Schedule L; and it may be useful to notice here the decisions that have been given on the foregoing mortgage enactment, taking these in their order.

Sec. 66. A registered mortgagee deposited with a creditor his deed of mortgage of a ship, and thereafter he became a bankrupt:—it was held that the deposit took this ship out of the order and disposition of the bankrupt, and constituted his creditor an equitable mortgagee of his mortgage deed of the ship.[5] But an equitable mortgage *of a ship* (not being registerable) was held void;[6] and, therefore, where the registered first mortgagees of a ship, with a power of sale, took from the mortgagor a written (but not registered) declaration that the mortgage should be a security, not only for the mortgage debt, but *for such sums as might, for the time being, be due by the mortgagor to the mortgagees, or their firm, however composed*:—subsequently, a person took another registered mortgage, expressly subject to the first mortgage, but not noticing the un-

[1] Sec. 72. [2] Sec. 73. [3] Sec. 74. [4] Sec. 75.
[5] Lacon *v.* Liffon, 7 L. T. *n. s.* 411. [6] Liverpool Borough Bank, *ut. sup.*

registered charge, of which, however, the second mortgagee had notice:—it was held, that the unregistered declaration was not merely a further charge, but a new security, which the Merchant Shipping Act excluded from a preference over the second mortgagee.[1] And where the owner mortgaged his unfinished ship, and, when the ship was completed, registered it in his own name, in terms of section 42 of the Merchant Shipping Act, and on the day following the mortgagee registered his mortgage deed,—the owner having subsequently become bankrupt, it was held, that, though there was no mortgage deed subsequent to the owner's being registered, the possession of the ship was not in the assignees in bankruptcy, but in the mortgagee.[2] Now, however, the legislature has expressly declared that equitable interests are not excluded by the principal Act. By 25 and 26 Vict., cap. 63, sec. 3, it is declared that "the expression beneficial interest," whenever used in the second part of the principal Act, includes interests arising under contract and other equitable interests; and the intention of the said Act is, that, without prejudice to the provisions contained in the said Act for preventing notice of trusts from being entered in the register-book or received by the registrar, and without prejudice to the powers of disposition and of giving receipts conferred by the said Act on registered owners and mortgagees, and without prejudice to the provisions contained in the said Act relating to the exclusion of unqualified persons from the ownership of British ships, *equities may be enforced against owners and mortgagees of ships* in respect of their interest therein, in the same manner as equities may be enforced against them in respect of any other personal property. See *Liverpool Marine Credit Co.* v. *Wilson*, L. R. 7 Ch. 507, and cases there cited.

Sec. 67. A ship was mortgaged, and the power of sale granted by section 71 was postponed till after a certain date, and the mortgage deed was duly recorded in the ship's register-book, but there was no endorsement of the mortgage *on the ship's certificate of registry*, as had been required by two previous Registry Acts:—it was held that the mortgage was not invalid,—and by Lord Campbell, C.J., that the registration was perfect, without any endorsement on the certificate of registry.[3]

Sec. 70. It has been held that a mortgagee of a ship is entitled to use her;[4] but where the mortgagee of a steam-ship took possession of her, and used her for a speculation, which turned out to be a loss, and thereafter he sold her disadvantageously:—it was held that he himself must bear this loss, and was chargeable with the value of the vessel at the time he took possession of her.[5] And as this section enacts that "the mortgagor shall not be deemed to have ceased to be owner of the mortgaged ship;"—where the mortgagees of a ship allowed the mortgagor, for upwards of two years, to remain in possession, and navigate the ship for his own benefit;

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1 Par *v.* Applebie, 7 De G. M. and G. 585. 2 Bell *v.* Bank of London, 3 H. and N. 790.
3 Dickinson *v.* Kitchen, 8 El. and Bl. 780. 4 De Mattes *v.* Gibson, 7 Jur. *n. s.* 282.
5 Marriott *v.* Anchor Reversionary Co., 7 Jur. *n. s.* 713.

and on her becoming unseaworthy, the mortgagor, without the knowledge of the mortgagees, placed her in the hands of a shipwright for the reasonable and necessary repairs, and the latter, not being able to obtain payment of these repairs, retained possession of the ship, and, when the mortgagees demanded possession of the ship, he refused to deliver her until these repairs were paid for:—it was held, that the mortgagees must be held to have implicitly authorised the mortgagor to keep the ship in an efficient state, and, for that purpose, to order necessary repairs to be done upon the ordinary terms, one of which was, that the shipwright could retain the ship for the expense of the repairs.[1]

Sec. 71. This section regulates the order of preference of two or more registered mortgagees, according to the date of the entry of each mortgage deed in the ship's register-book;—and a registered mortgagee can prevent a judgment creditor of the registered owner from seizing and selling the ship in execution, as that would defeat the rights of the mortgagee to make the ship available for payment of his mortgage debt in terms of this section.[2]

Sec. 72. In the English Bankruptcy Laws, certain acts or deeds done, allowed, or committed by a debtor, are termed *acts of bankruptcy*, and have the effect of making the debtor a bankrupt upon petition of a creditor. These acts of bankruptcy are as follows:—

(1.) That the debtor has, in England or elsewhere, made a conveyance or assignment of his property to a trustee or trustees for the benefit of his creditors generally; (2.) That he has made a fraudulent conveyance, gift, delivery, or transfer of his property or of any part thereof; (3.) That he has, with intent to defeat or delay his creditors, done any of the following things, viz.,—departed out of England; or, being out of England, remained out of England; or, being a trader, departed from his dwelling-house, or otherwise absented himself, or begun to keep house, or suffered himself to be outlawed; (4.) That he has filed in the prescribed manner in the Bankruptcy Court a declaration admitting his inability to pay his debts; (5.) That execution issued against him on any legal process for the purpose of obtaining payment of not less than fifty pounds has, in the case of a trader, been levied by seizure and sale of his goods; (6.) That the creditor presenting the petition has served on the debtor a debtor's summons requiring the debtor to pay a sum due, of an amount not less than fifty pounds, and the debtor, being a trader, has for the space of seven days, or, not being a trader, for the space of three weeks, succeeding the service of such summons, neglected to pay such a sum or to secure or compound for the same.[3]

And by the same laws it is provided that all goods and chattels being at the commencement of the bankruptcy in the possession, order, or disposition of the bankrupt, being a trader, by the consent of the true owner, of which goods and chattels the bankrupt is reputed owner, . . . shall pass to the trustee in bankruptcy for the benefit of the general body of creditors.[4]

But by section 72 of the Merchant Shipping Act, 1854, *registered* mortgages of ships are not to be affected by any act of bankruptcy which may

[1] Williams *v.* Allsup, 8 Jur. *n. s.* 57.
[2] Kitchen *v.* Irving, 5 Jur. *n. s.* 118.
[3] 32 and 33 Vict., cap. 71, sec. 6.
[4] 32 and 33 Vict., cap. 71, sec. 15.

be committed by the mortgagor, notwithstanding the mortgagor may have in his possession, and be the reputed owner of, the registered property; and the mortgage is to be preferred to the title of the trustee in bankruptcy.

Upon the construction of the foregoing sections, see also the following cases:—*The Innisfallen* and *The Catheart*, L. R. 1 A. and E. 72 and 314; *Bell* v. *Blyth*, 4 Ch. 136.

VI.—CERTIFICATES OF MORTGAGE OR SALE.

Any registered owner, desirous of disposing, by way of mortgage or sale, of any ship, or share, in respect of which he is registered, *at any place out of the country or possession* in which the ship's port of registry is situate, can apply to the registrar, who can thereupon enable him to do so by granting the certificates after mentioned,—called, respectively, certificates of mortgage or certificates of sale, according as they give power to mortgage or a power of sale.[1]

Previously to any certificate of mortgage or sale being granted, the applicant must state to the registrar,—to be by him entered in the register-book,—the following particulars:—(1.) The names of the persons by whom the power mentioned in the certificate is to be exercised,—and, in the case of a mortgage, the greatest amount of the charge to be created,—and, in the case of a sale, the lowest price at which a sale is to be made, if it is intended to fix a lowest price; (2.) The precise place or places where such power is to be exercised, or, if no place be specified, then,—that it may be exercised anywhere, subject to the provisions after mentioned; (3.) The limit of time within which such power may be exercised.[2]

No certificate of mortgage or sale can be granted, so as to authorise any mortgage or sale to be made—(1.) At any place within the United Kingdom, if the ship's port of registry is in the United Kingdom,—or at any place within the same British possession, if the port of registry is within a British possession; (2.) By any person not named in the certificate.[3]

Certificates of mortgage and sale must be respectively in the forms M and N in the Schedule, and must contain a statement of the several particulars directed to be entered in the register-book; and, in addition thereto, an enumeration of any registered mortgages affecting the ship or shares in respect of which such certificates are given.[4]

1.—*Certificates of Mortgage.*

The following rules must be observed as to certificates of mortgage:—(1.) The power must be exercised in conformity with the directions in the certificate. (2.) A record of every mortgage thus made must be endorsed on the certificate by a registrar or British consular officer. (3.) No mortgage, thus fairly and honestly made, can be challenged by reason of the person *by whom the power was given* dying before the making of such mortgage. (4.) When the certificate specifies the place or places at which, and a limit of time (not exceeding twelve months) within which the power is to be exercised, no mortgage, fairly and honestly made to a mortgagee, without notice, can be questioned by reason of the bankruptcy or insolvency of the person by whom the power was given. (5.) Every mortgage which

[1] Sec. 76. [2] Sec. 77. [3] Sec. 78. [4] Sec. 79.

is so registered on the certificate of mortgage has priority over all mortgages of the same ship or share, created at a date after the date of the entry of this certificate in the register-book; and if there be more mortgages than one so endorsed, the respective mortgagees thus claiming are entitled,—notwithstanding any express, implied, or constructive notice,—one before the other, according to the date at which a record of each instrument is endorsed on the certificate, and not according to the date of the instrument of mortgage. (6.) Subject to the foregoing rules, every mortgagee, a record of whose mortgage is registered on the certificate, has the same rights and powers, and is subject to the same liabilities, as he would have had and been subject to, if his mortgage had been registered in the register-book, in place of on the certificate. (7.) The discharge of any mortgage so registered on the certificate can be endorsed thereon by any registrar or British consular officer, upon the production of the evidence required by the Act (sec. 68) to be produced to the registrar on the entry of the discharge of a mortgage in the register-book; and on this endorsement being made, the estate (property), if any, which passed to the mortgagee, belongs to the same person or persons to whom that property, having regard to any intervening acts and circumstances, would have belonged, if no such mortgage had been made. (8.) Upon the delivery of any certificate of mortgage to the registrar by whom it was granted, the registrar, after recording in the register-book, so as to preserve its priority, any unsatisfied mortgage registered thereon, must efface that certificate, and enter the fact of its being so effaced in the register-book; and every certificate so effaced is void to all intents.[1]

2.—*Certificates of Sale.*

1. No such certificate can be granted, unless for the sale of a whole ship.

2. The power must be exercised in conformity with the directions in the certificate.

3. No sale made to a fair and honest purchaser, for a valuable consideration, can be challenged by reason of the person by whom the power was given dying before the making of such sale.

4. When the certificate specifies the place or places at which, and a limit of time, not exceeding twelve months, within which the power is to be exercised, no sale fairly and honestly made to a purchaser, for a valuable consideration, can be challenged by reason of the bankruptcy or insolvency of the person by whom the power was given.

5. Any transfer made to a person qualified to be the owner of British ships must be by bill of sale, in the form before mentioned, or as near thereto as circumstances permit.

6. If the ship is sold to a party qualified to hold British ships, the ship must be registered anew; but notice of all mortgages appearing on the certificate of sale must be entered in the register-book.

7. Previous to this registry anew, there must be produced to the registrar required to make the same, the bill of sale by which the ship is transferred,—the certificate of sale,—and the certificate of registry of that ship.

8. He then retains the certificates of sale and registry, and, after having

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[1] Sec. 80.

endorsed on these instruments an entry of a sale having taken place, he forwards the certificates to the registrar of the port appearing therefrom to be the former port of registry of the ship, and thereupon the registrar last mentioned makes a memorandum of the sale in his register-book, and the registry of the ship in such book is considered as closed, unless so far as relates to any unsatisfied mortgages entered therein.

9. On this registry anew, the description of the ship contained in her original certificate may be transferred to the new registry-book, without her being re-surveyed, and the declaration to be made by the purchaser must be the same as is required to be made by an ordinary transferee.

10. If the ship is sold to a party not qualified to be owner of a British ship, the bill of sale, the certificate of sale, and the certificate of registry must be produced to some registrar or consular officer, who retains the certificates of sale and registry, and having endorsed thereon the fact of that ship having been sold to persons not qualified to be owners of British ships, he forwards these to the registrar of the port appearing to be the port of registry of such ship; and thereupon the last-mentioned registrar makes a memorandum of the sale in his register-book, and the registry of the ship in his book is considered as closed, unless so far as relates to any unsatisfied mortgages entered therein.

11. If, upon a sale being made to an unqualified person, failure is made in the production of such certificates as now mentioned, such unqualified person is considered, by the British law, as having acquired no title to, or interest in the ship; and further, the party upon whose application such certificate was granted, and the persons exercising the power, each incur a penalty not exceeding £100.

12. If no sale is made in conformity with the certificate of sale, this certificate must be delivered to the registrar by whom it was granted; and thereupon the registrar effaces it, and enters the fact of its being effaced in the register-book; and every certificate so effaced is void to all intents.[1]

3.—*Loss, &c., of Certificates.*

Upon proof, at any time, to the satisfaction of the Commissioners of Customs, that any certificate of mortgage or sale is lost, or so obliterated as to be useless, and that the powers thereby given have never been exercised, —or, if they have been exercised, then, upon proof of the several matters and things that have been thus done, the registrar can, with the sanction of the Commissioners, as circumstances may require, either grant a new certificate,—or direct such entries to be made in the register-book, or such other matter or thing, as might have been made or done if no such loss or obliteration had taken place.[2]

The registered owner, for the time being, of any ship or share therein, for which a certificate of mortgage or sale has been granted, specifying the place or places where the power thereby given is to be exercised, can, by an instrument under his hand, in the form O in the Schedule, or as near thereto as circumstances permit, authorise the registrar by whom that certificate was granted to give notice to the registrar or consular officer, registrars or consular officers, at such place or places, that the certificate is

[1] Sec. 81. [2] Sec. 82.

revoked, and notice must be given accordingly; and all registrars or consular officers receiving such notice must record the same, and exhibit it to all persons applying to them for the purpose of effecting or obtaining a mortgage or transfer under a certificate of mortgage or sale. After said notice has been so received, this certificate, so far as concerns any mortgage or sale to be thereafter made at that place, is held to be revoked and of no effect; and every registrar or consular officer recording any such notice, must thereupon state to the registrar by whom such certificate was granted, whether any previous exercise of the power to which the certificate refers has taken place.[1]

There seems to be nothing in the foregoing enactments which takes away or abridges the power of a shipmaster to borrow money on bottomry, or even to sell the ship herself, in case of a necessity, at a foreign port.

VII.—REGISTRY ANEW AND TRANSFER OF REGISTRY.

1.—*Registry Anew.*

When a registered ship is so altered as not to agree with her tonnage and description in the register-book, then, if this alteration is made at a port where there is a registrar, the registrar of that port,—but, if made elsewhere, on the ship's first coming after the alteration to a port having a registrar, that registrar, on application to him, and on a certificate from the proper surveyor, specifying the nature of the alteration, either retains the old certificate of registry, and grants a new one containing a description of the ship as altered, or endorses on the existing certificate a memorandum of the alteration, and subscribes his name to this endorsement. If the registrar to whom this application is made is the registrar of the port of registry, he himself enters in his register-book the particulars of the alteration so made, and the fact of a new certificate having been granted, or of an endorsement made on the existing certificate;—but, if he is not such registrar, he forthwith reports these particulars and facts, accompanied by the old certificate where a new one has been granted, to the registrar of the port of registry, who retains this old certificate, and enters these particulars and facts in his book of registry accordingly.[2]

When the registrar to whom application is made is the registrar of the port of registry, he may, if he thinks fit, instead of registering the alteration, require that ship to be registered anew, as on the first registry,—and, if he is not such registrar as now mentioned, he may, nevertheless, require such ship to be registered anew; but in this case, he grants a provisional certificate, or makes a provisional endorsement of the alteration made, as is directed, where no registry anew is required, taking care to add to this certificate or endorsement a statement that the same has been made conditionally, and to insert in his report to the registrar of the ship's port of registry a like statement.[3]

Every provisional certificate, or certificate provisionally endorsed, must within ten days after her first subsequent arrival (if registered in the United Kingdom) at her port of discharge there,—or, if registered elsewhere, at her port of discharge in the British possession in which her port

[1] Sec. 83. [2] Sec. 84. [3] Sec. 85.

of registry is, be delivered up to the registrar thereof, who thereupon causes such ship to be registered anew, in the same manner, in all respects, as on the first registry of a ship.[1]

On failure of such registry anew, or registry of alteration of any ship so altered, that ship is held not duly registered, and can no longer be recognised as a British ship.[2]

If upon any change of ownership, the owner or owners desire to have that ship registered anew, though not required by the Act, on delivering to the registrar of the port or place at which the ship is already registered the existing certificate of registry, and on the other requisites to registry (or such as the registrar thinks material) being duly complied with, he can make such registry anew, and grant a certificate thereof.[3]

2.—*Transfer of Registry.*

The registry of any ship may be transferred from one port to another, on the application of all parties appearing on the register interested in such ship, whether as owners or mortgagees—this application being made by a declaration in writing, and subscribed,—if the party required to do so resides at or within five miles of the custom-house of the port from which the ship is to be transferred,—in presence of the registrar of that port;—but, if beyond that distance, in the presence of any registrar, or of any justice.[4] Upon this application being made, and upon delivery of the certificate of registry, the registrar of the port at which the ship is already registered transmits to the registrar of the port at which the ship is intended to be registered, notice of this application being made to him, with a true copy of all particulars relating to that ship, and the names of all the parties appearing, by his book, to be interested as owners or mortgagees therein; and upon receipt of this notice, the last-mentioned registrar enters all these particulars and names in his book of registry, and grants a fresh certificate of registry, and thenceforth that ship is held as registered at, and belonging to, the last-mentioned port; and the name of this last-mentioned port must be substituted on the stern of the ship, in place of the name of the port previously thereon.[5] The certificate of registry may be delivered up to the registrar at either port (18 and 19 Vict., cap. 91, sec. 12).

This transfer of the registry does not in any way affect the rights of the several parties interested, either as owners or mortgagees in such ship; but their rights continue, in all respects, the same as if no such transfer had been made.[6]

VIII.—NATIONAL CHARACTER.

No officer of customs can grant a clearance or transire for any ship until the captain has declared to such officer the nation to which he claims that she belongs, and thereupon the officer inscribes that name upon the clearance or transire; and if any ship attempts to proceed to sea without this clearance or transire, any officer of the customs can detain her until such declaration is made.[7]

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[1] Sec. 86. [2] Sec. 87. [3] Sec. 88. [4] Sec. 89. [5] Sec. 90. [6] Sec. 91. [7] Sec. 102.

The offences after mentioned are punished as follows :—

1. If any person uses the British flag, and assumes the British national character, on board any ship owned, in whole or in part, by any person not entitled by law to own British ships,—for the purpose of making such ship appear to be a British ship,—that ship is forfeited to Her Majesty, unless such have been assumed for the purpose of escaping capture by an enemy, or by a foreign ship of war, in the exercise of some belligerent right; and in any proceeding for enforcing these forfeitures, the burden of proving the right to use the British flag, and assume the British national character, lies upon the party using and assuming the same.

2. If the captain or owner of any British ship does, or permits to be done, any matter or thing, or carries or permits to be carried, any papers or documents, with intent to conceal the British character of his ship from any person entitled, by British law, to inquire into the same, or to assume a foreign character, or with intent to deceive any such person as now mentioned,—that ship is forfeited to Her Majesty; and if the captain commits, or is privy to the commission of, the offence, he is guilty of a misdemeanour.

3. If any unqualified person (unless in transmitted interests as before mentioned, p. 16) acquires, as owner, any interest, either legal or beneficial, in a ship using a British flag, and assuming the British character, his interest is forfeited to Her Majesty.

4. If any person, on behalf of himself or any other person, or body of persons, wilfully makes a false declaration as to the qualification of himself, or of such other person or body of persons, to own British ships, or any share therein, the declarant is guilty of a misdemeanour; and the ship or share, in respect of which such declaration is made, if the same has not been forfeited under the foregoing provision, is forfeited to Her Majesty, to the extent of the interest of the person making the declaration; and unless it is shown that he had no authority to make the same, also of the interest of the parties on behalf of whom the declaration is made.

And in order to carry into effect the above provisions as to forfeitures, it is lawful for any commissioned officer on full pay in the military or naval service of Her Majesty, or any British officer of customs, or any British consular officer, to seize and detain any ship which, either wholly or as to any share therein, has become subject to forfeiture as aforesaid, and to bring her for adjudication before the High Court of Admiralty in England or Ireland,—or any Vice-Admiralty court in Her Majesty's dominions; and that court can thereupon make such order in the case as it may think fit, and can award to the officer bringing in the same for adjudication such portion of the proceeds of the sale of such forfeited ship or share as it may think right.[1]

None of the foresaid officers are responsible, either civilly or criminally, to any person in respect of the seizure or detention of any ship that has been seized or detained by him in consequence of the foregoing provisions, though such ship is not brought in for adjudication, or, if so brought in, is declared not liable to forfeiture, if it is shown to the satisfaction of the judge or court that there were reasonable grounds for such seizure or

[1] Sec. 103.

detention; but if no such grounds are shown, the judge or court can award payment of costs and damages to any party aggrieved, and can make such other order in the premises as it thinks just.[1]

If any colours usually worn by Her Majesty's ships, or any colours resembling those of Her Majesty, or any distinctive national colours,—except the red ensign usually worn by merchant ships, or except the union jack with a white border,—or if the pendant usually carried by Her Majesty's ships, or any pendant in anywise resembling such pendant, are or is hoisted on board any ship or boat belonging to any subject of Her Majesty, without warrant for so doing from Her Majesty, or from the Admiralty,—the master of such ship or boat, or the owner thereof, if on board the same, and every other person hoisting, or joining or assisting in hoisting, the same, incur, for every such offence, a penalty not exceeding £500; and it is lawful for any officer on full pay in the military or naval service of Her Majesty, or any British officer of the customs, or any British consular officer, to board any such ship or boat, and to take away any such jack, colours, or pendant; and such jack, colours, or pendant are forfeited to Her Majesty.[2] A British merchant ship was boarded, she having an ensign with the St. George's Cross, &c., colours other than those worn by merchant ships, and contrary to this section, and a warrant of arrest was issued against her captain.[3]

Whenever it is declared by the Merchant Shipping Act that a ship, belonging to any person or body corporate, qualified according to the Act to be owners of British ships, shall not be recognised as a British ship, such ship is not entitled to any benefits, privileges, advantages, or protection usually enjoyed by British ships, and is not entitled to use the British flag, or assume the British national character; but, so far as regards the payment of dues, the liability to pains and penalties, and the punishment of offences committed on board such ship, or by any person belonging to her, she is dealt with in the same manner, in all respects, as if she were a recognised British ship.[4]

IX.—OWNERS AND PART-OWNERS.

It has already been stated (chap. i.) who are entitled to be registered owners of British ships; but, in the ownership of a British vessel, the common relation is that of part-owners where two or more are proprietors of the same vessel. And these part-owners are not the same as a partnership or a joint-tenancy, where the property or subject is possessed in common, and the parties have nothing several and distinct,—for each part-owner or co-owner has his distinct, though undivided, interest or proportion of the vessel:—therefore, one part-owner cannot dispose of the share of another, nor can he, like a partner, dispose of the whole vessel, although he can, freely and unreservedly, dispose of his own share, when and to whom he pleases. On the death of a part-owner, his share does not belong to the others by survivorship, but descends to his own personal representatives, the same as his other personal property;[5] and the Merchant Shipping Act specially provides for personal representatives being registered as owners.[6]

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[1] Sec. 104. [2] Sec. 105. [3] Regina *v.* Ewen, 2 Jur. *n. s.* 454.
[4] Sec. 106; Regina *v.* Seberg, L. R. 1 C. C. 264. [5] Shee's Abbot, 66. [6] Sec. 58.

Those individuals whose names appear as owners on the register are, at first sight, the parties who are liable to third parties on contracts in regard to the vessel; but, in a question between private parties, the register is not, by itself, evidence to charge a person as owner, without proof of the transfer, or of the entry, being with his consent or by his authority.[1] So it has been held, that, where there was merely a bill of sale in favour of a party, and two registers, upon the oath of other two owners that they and that party were owners, but no proof of assent, acceptance, or authority on the part of the latter, he was not held as an owner;[2] and in the case of Brodie, now referred to, it was held, that the mere circumstance of a person being registered as a part-owner does not give his co-owner, or the captain or ship's broker, any authority to pledge the credit of that part-owner for necessary repairs, for the expense of which he had given express notice to the party employed, when the work was begun, that he would not be responsible. So, also, when a party was sued, as partner of a company, for the value of goods furnished to a ship; but he was not, in fact, a partner at the time,—having quitted the company, sold his share of the ship, and the dissolution and a change of firm having been intimated by circulars to the correspondents of the house, but no public notice was given:—the court held, that his name continuing on the registry was not enough to prolong his liability as partner,—that he was truly no partner at the time of the purchase,—and that he had not held himself out, and was not relied on, as a partner.[3] And it has been held, that the bare fact of a party being registered as a part-owner, under an unconditional bill of sale, which was shown to have been granted only as a security for advances, does not give his co-owner, or the captain appointed by that co-owner, authority to pledge his credit for necessary repairs.[4]

In general, the registered owners will be liable for furnishings made to the vessel, on the order of the shipmaster, even though they may have sold, but not legally transferred, their right,—or where the transfer has not been completed on the registry, in terms of the Registry Acts. As where two parties were joint-owners of a vessel, and the one conveyed his share to the other by a deed, which imperfectly narrated the certificate of registry, and was, therefore, null under the former Registry Acts;—the latter, while acting as sole owner, ordered repairs, for which his name was entered,—but an action was brought for the price against the former part-owner:—and it was held, that there was no transfer, but only an attempt to transfer, and that, therefore, that party was still owner in his original right, and so responsible; and that, if one part-owner permitted the other part-owner to employ a person to repair the ship, he was bound by his acts.[5] Where, also, the seller of a vessel had ordered furnishings, which were supplied before the purchaser's title was completed, and furnishings were made by order of the captain after the purchaser became owner, the seller was held liable for the former, and the purchaser for the latter.[6] And when one of two joint-owners of a vessel, by a private agreement, parted with all his interest in his share to the other, to be paid by bills of different

[1] Frazer *v.* Hopkins, 2 Taunt.; Myers *v.* Willis, 18 Scott, 886.
[2] Tinkler *v.* Walpole, 14 East, 226; Brodie *v.* Howard, 1 Jur. *n. s.* 1209.
[3] M'Iver *v.* Humble, 16 East, 169.
[4] Hackwood *v.* Lyall, 2 Jur. *n. s.* 44.
[5] Westerdell *v.* Dale, 7 T. R. 306.
[6] Trewhella *v.* Rowe, 11 East, 435.

dates, but still kept his name on the registry by way of collateral security for payment of the bills :—he was held liable for repairs done to the vessel subsequent to this agreement, although he had never afterwards interfered in the concerns or management of the vessel.[1]

But although the Registry Acts enable third parties to ascertain who are the legal owners, which might be done otherwise, yet, if these owners are not liable at common law, they are not so by reason of anything in these Acts, the mere *legal* ownership not rendering them liable for the ship's debts, without proof of agency or actual employment, express or implied. The registered owners are, therefore, only liable, at first sight, for repairs, upon this presumption, that the works from which they are to derive benefit had been done with their knowledge or consent; and the mere fact of ownership, without an express or implied contract, is not sufficient to render a merely registered owner liable for repairs done or goods furnished on the ship's account; and in all such cases, where repairs are not expressly done, or furnishings made, for, or by the direct orders of the owners, the true question is—On whose credit was the work done? Thus, the purchaser of a ship, who took possession and acted as sole owner before the completion of his title, directed the captain to take her to a shipwright to be repaired; but he did not get the registry altered till after the repairs had been done, and notice was given to the shipwright of the change of ownership :—in an action for the repairs against the sellers,—the registered owners at the time,—it was held, that though the owners of a ship are, no doubt, liable for repairs ordered for them, or their behoof, by the captain, yet, if a stranger order repairs for another ship, the owners are not liable, and, in this case, the captain, by order of the purchaser,—a stranger in point of law,—had the repairs done.[2] So, when an action was brought against the registered owner, as such, for repairs done to his ship, which repairs were ordered by the direction of a captain appointed by a stranger to the owner, and while the latter was at a distance; to redargue the evidence of the registry, the owner proved a transfer of his interest by a bill of sale which had not been registered :—it was held, that the registered owner was not liable.[3] So, where a party had taken a share in a ship under a conveyance which was void for want of conformity with the provisions of the then Registry Acts, he was held not liable to pay for goods supplied for her use, unless credit had been given to him individually, or he had held himself out as owner,—or, unless he had made an express promise to pay, or had received profits from the vessel.[4] And the same principle was applied in another case, where the owners appearing last on the registry, by transfer from the previous owners, were pursued for the value of copper furnished for the repair of the vessel,—but there was a retransfer to these former owners, one of whom had the management of the vessel at the time the copper was supplied, and had appointed the captain, and given the order for the copper, and an account was produced, bearing the directions of these former owners to the furnishers :—it was held, that the persons whose names were last on the registry, did not in any way appear in the transaction,—that the furnishers

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[1] Dawson *v.* Leake, D. and R 52.
[2] Young *v.* Brander, 8 East, 10.
[3] Jennings *v.* Griffith, 1 R. and M. 42.
[4] Harrington *v.* Fry, 1 C. and P. 239.

dealt with the parties in possession alone,—and that the account showed strongly that they alone were looked to for payment.[1]

Without enumerating other and more recent cases, it may be sufficient to state, for the guidance of parties concerned,—that, in a disputed case of repairs done or furnishings made to a ship, the only question is—Whether the repairs done or the stores supplied were so done and supplied on the authority, *express or implied*, of the party sought to be made liable?[2] The rule is, that, upon a general order for repairs given by the captain, the party executing them has the security of the ship,—of the captain,—and of the owners. But, in an action against the parties, *as owners*, who are so for this purpose? The persons registered as owners are not *necessarily* so;—the Registry Acts were not passed for this purpose;—and the question of liability for repairs is to be considered as before these Acts passed. Nor, in this view, is there any hardship upon the tradesman, as he has always the means of knowing who are really the owners, by asking the captain to show the charter-party;—if this is refused, he may decline dealing.[3] And, "whatever is fit and proper for the service on which a vessel is engaged,—whatever the owner of that vessel, as a prudent man, would have ordered, if present at the time,—comes within the meaning of the word 'necessary,' as applied to repairs done, or things provided for the ship, by the order of the captain, for which the owners are liable."[4]

The liability for repairs is determined on the same principle, when the owner has let out the ship, by charter-party, or rather a contract of hiring for a certain period or number of voyages, at a fixed rent or sum, payable monthly or yearly, or by the voyage, and likewise gives up all control over the vessel, and the appointment of master and mariners. But the terms of the charter-party, or contract of hiring, require to be very precise and peculiar, so as to effect this purpose; though, if such terms be used, the charterer is for that time held as owner, and the parties who contract with him, or his captain, and who furnish repairs, stores, &c., have only their claim against him.

As, where the registered owner of a vessel let her by charter-party, for a given number of voyages, and at a certain rent, to the then captain, who afterwards ordered stores for the use of the ship, for the price of which an action was brought against the registered owner; but it was held, that, as the owner and captain did not stand to each other in the position of master and servant,—and as the former captain *now* was not the owner's servant,—therefore the registered owner was not liable for his orders.[5] And where, in the case before quoted, the registered owners of a steam-vessel let her by charter-party for a year, they engaging to keep the engine in repair and appoint engineers, and the charterer binding himself to pay all other repairs, wages, and charges of navigating, &c., and to indemnify the owners against all debts, &c., incurred in respect of the charter-party and the employment of the vessel:—goods were supplied and work done on the orders of the charterer, who acted as

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[1] Cox *v.* Reid, 1 C. and P. 602. [2] Briggs *v.* Wilkinson, 7 B. and C. 30.
[3] *Per* Littledale, J., in Reeve *v.* Davis, 1 Ad. and E. 315.
[4] *Per* Abbot, C.J., in Webster *v.* Seehamp, 4 B. and A. 352, followed by Sir R. Phillimore in *The Riga*, L. R. 3 Ad. 516.
[5] Fraser *v.* Marsh, 13 East, 238.

captain, by parties who did not know of the contract: but it was held that no action lay in respect of these against the registered owners.[1] And the general rule is, that the captain has authority, both at home and abroad, to order and bind the owners for repairs or stores, necessary for the providing and navigation of the ship in the voyage or trade in which the owners employ her.[2]

A part-owner will also be liable for repairs done on the vessel, though these repairs may have been ordered by a captain appointed by the other two part-owners;[3] but if a part-owner order supplies in his own name, without mentioning any others concerned, and the person giving the credit does not, at the time, know that there are other part-owners, that part-owner cannot insist upon the other part-owners being called in an action for the price.[4] When the furnishings have been made on the order of the captain, it will be no defence to the owners that they themselves, or a ship's husband, superintended the outfit; because the captain, as their accredited agent, is presumed to act with their sanction and approbation. Nor is it any proper defence that the owners had supplied the captain with money to pay the furnishings or repairs, because the public are not presumed to know this; and if the furnishings or repairs have been made at a distant port, upon the order of the agent of the owners at that port, and the account is attested by the shipmaster, it will not discharge the owners that they have paid the amount to their agent.[5]

It lies upon the furnisher on the captain's order, either in a foreign or a home port, to show that the furnishings or repairs were necessary, and were not beyond the ordinary use and occasion of the vessel; and, if he do so, the owner will be liable, the general rule being, as before stated, that whatever is fit and proper for the service on which a vessel is engaged, comes within the meaning of the term "necessary," as applied to repairs done or things provided for the ship, by the order of the master, for which the owners are liable. And, on this principle, the following cases have been decided:—The charterer of a vessel had agreed, in the charter-party, on the arrival of the ship at her outward port, to supply, through his agent there, cash to the captain for the disbursements of the vessel, for which the captain was to draw bills on the owner, and, on arrival there, the agent supplied *goods* for the use of the crew, and paid certain demands on the captain, but made no cash advances to him:—it was held, that, although it was not shown that any bills were drawn by the captain for the amount, the charterer could recover from the owner the amount as for goods sold and delivered and for money paid,—the captain having authority, without any express terms in a charter-party, to obtain supplies of goods and money for the necessary use of the vessel, on the credit of the owner.[6] In another case, the charter-party provided that sufficient money, not exceeding a certain sum, should be advanced to the captain for disbursements; but the party to whom the vessel was addressed advanced a larger sum, and the owners were held liable for the full amount.[7] And a vessel, whose owner resided at Exeter, was wind-bound in a river, a day's post from Exeter, and the captain borrowed £5 from a friend, to

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[1] Reeve *v.* Davis, *ut sup.*
[2] Frost *v.* Oliver, 1 E. and B. 301; 18 Jur. 166.
[3] Young *v.* Brander, 8 East, 10.
[4] Baldeney *v.* Richie, 1 Starkie, 338.
[5] Stewart *v.* Hall, 2 Dow, 29; Carey *v.* White, 1 Brown's P. C. 284.
[6] Weston *v.* Wright, 7 M. and W. 396.
[7] Vaughan *v.* Fitzhugh, 3 Jur. 1002.

buy provisions:—in an action for this sum, it was not shown that the captain could have obtained the provisions on the owner's credit; and it was held that there was such a necessity for borrowing the £5 as made the owner liable.[1]

The captain's power of borrowing money will be considered afterwards; but as he has authority only to provide necessaries, or to borrow money with which to provide these, the owners will only be liable for the necessaries, or for money borrowed to provide these, on the furnisher proving that necessity. It has been held, that, in strictness, such a claim is limited to necessary supplies, and that such supplies, through necessity, may be of money as well as of goods; but where money is supplied, this must be understood, not of an indefinite supply of cash, which the captain may squander, but only of such as is warranted by the needs of the case,—as for the payment of duties, or other necessary purposes.[2] The lender must show the necessity for borrowing the money, and that the money was expressly borrowed and advanced, as well as actually expended, for the purposes of the vessel;[3] for it is not sufficient to prove the advance of a much larger sum than was necessary for the uses of the ship, and an application of *part* of that sum to such uses, the residue having been placed to the captain's private account.[4]

Although the captain's authority to borrow money does not extend to cases where the owner himself can personally interfere, as in a home port, or in a port where he has appointed an agent who can also personally interfere, yet to justify the captain in borrowing, and to render the owner liable, there must, in a home port, *at a distance from the owner's residence*, be a pressing necessity, when provisions or other necessaries require to be provided promptly, and where the captain and owner cannot communicate without inconvenience and delay. In such circumstances, the occasion authorises the captain to pledge the credit of his owner.

Thus, where a vessel in the transport service was in the port of Portsmouth, and having received orders from the Transport Board to proceed to Deptford, the captain borrowed money in Portsmouth, the port of discharge, to pay seamen's wages and tradesmen's bills, and for articles for the ship's use there:—and it was held that the owner was liable for the money so advanced for the necessary use of the ship, nor was the consent of the owner required to establish his liability.[5] And where the owners of a coasting vessel resided in North Wales, and the vessel being at Cardiff, in Glamorganshire, the captain borrowed money for the necessary use of the vessel:—it was held that the captain had authority by law to pledge the credit of his owner, resident in England, for money so advanced to him in an English port, where the owner had no agent, if such advance of money was necessary for the prosecution of the voyage.[6] In such cases, the general rule before stated (p. 34) is applicable, provided sufficient circumstances of necessity be shown.

But when this urgent necessity does not exist, nor anything to prevent communication between the captain and his owner, the former has no authority to borrow. As where a vessel was at Swansea, and the owner at

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[1] Edwards *v.* Havill, 16 M. G. and S. 107.
[2] Rocher *v.* Busher, 1 Starkie, 27.
[3] Thacker *v.* Moates, 1 M. and R. 79.
[4] Palmer *v.* Gooch, 2 Starkie, 428.
[5] Robinson *v.* Lyall, 7 Price, 592.
[6] Arthur *v.* Barton, 6 M. and W. 188.

Llanelly,—only eleven miles distant,—and the captain being in want of money to clear the vessel, and having been unable to raise it (as the owner had directed, by selling part of the cargo), sent three messages to the owner for money, but received none; whereupon he borrowed £10, telling of the applications made to the owner:—but it was held that, in his situation, the captain had no authority to borrow, and that the lender could not recover from the owner.[1] And, in another case, it was held, that the captain had no implied authority to pledge the owner's credit, in respect of necessary supplies and advances for the use of the vessel, during several weeks at Newport, Monmouthshire,—the owner, during all that time, having resided at Plymouth, and nothing prevented communication, if desired, between the captain and owner.[2]

If there has been no written agreement among the part-owners themselves as to the employment of the ship, or if there is no ship's husband in sole charge of the ship, then the majority in value of the part-owners can employ the vessel, in opposition to the will of the minority. The dissenting owners may arrest the vessel until the majority find security, either to bring back and restore to them their shares, or to pay the value of their shares; and if the vessel be lost, these dissenting owners will obtain immediate payment of the stipulated sum.[3] The dissenting owners are not liable in any share of the expense of outfit, nor are they entitled to any share in the profits of that voyage,—as the vessel sails wholly at the charge and risk, and for the profit, of the others; but should the minority omit either to arrest the vessel, or, at all events, formally to notify their dissent to the others, and if possible, also to the freighters, they will have no claim, though the ship be lost in the ordinary use of it. When the part-owners are equally divided as to the employment of the vessel, either may adopt the same steps.[4]

Part-owners have an interest in common in the whole ship, and each one has a special right of property in each of the individual parts; and, therefore, each individual owner can dispose of his share, without reference to his co-owners. They are also entitled to share the profit, and are bound to bear the loss, arising from any adventure undertaken by common consent, in proportion to their shares; and this is not affected by the bankruptcy of any one of them taking place after the commencement of the voyage or adventure, without having paid his share of the expense of outfit; and if the other part-owners have, as such, paid, or become responsible for, the expense of the outfit, they can deduct the bankrupt's share from his proportion of the profits. As, when the part-owners of a vessel engaged in the whale-fishing had been in the practice, on the arrival of the vessel at her home port, of having the whalebone taken into the possession of the managing owner, and sold by him, and the proceeds applied in part discharge of the expenses of the ship,—of the blubbers being deposited in a warehouse rented by the owners from one of their number,—the oil produced from it being then put into casks, and each owner's share being weighed out and placed separately in the warehouse, in casks marked with his initials;—after division, the warehouseman delivered to the orders of each part-owner his share of the oil, unless notice was given by the manag-

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[1] Johns *v.* Simmons, 2 Ad. and El. *n. s.* 425.
[2] Stonehouse *v.* Gent, ibid. 431.
[3] Shee's Abbot, 70.
[4] Ibid.

ing owner that that part-owner's share of the disbursements had not been paid, and, in that case, the warehouseman detained the oil until the demand had been satisfied. In 1825, the vessel arrived from her voyage, and the same course was followed,—the share of A, one of the part-owners, being twenty-nine tuns, having been weighed out and set apart, stowed in the warehouse in casks, which had his initials put on them. In January 1826, A became bankrupt, after twenty tuns of the oil had been delivered to him, and the remaining nine tuns remained in the warehouse at the time of his bankruptcy; but, in the same month, orders were given not to deliver the remaining oil, as A's share of the disbursements had not been paid:—in an action by A's assignees against the owner of the warehouse for delivery of the residue of A's oil, it was held, that the other part-owners had originally a lien upon it for his share of the ship's disbursements, and that this right was not parted with by the separation of his share from the residue, and placing it in casks marked with his name.[1]

The same principles which free the registered owners from liability for furnishings to the vessel, where it has been chartered to a third party, also regulate their liability to the shippers of goods; and in such cases, the true question will be—Whether the contract for the conveyance of the goods was made by the owner of the goods with the owners or their *authorised* agents, or with the charterer of the vessel? And this, again, will depend upon the question—Who was the *immediate* owner, in the exclusive possession of the vessel, for the time, when such contract or bargain was made?

Thus, when the captain of a ship had, in his own name, and in the absence of his owners, chartered the ship to a firm for a voyage from Falmouth to Faro, and back to London; and the firm engaged, by the charter-party, to provide a full lading from Faro, and to pay a stipulated price per ton. A quantity of raisins were shipped by a third party at Faro, with consent of the agent of the firm there, and the captain signed a bill of lading, engaging to deliver the raisins to that third party, "he paying freight per charter-party." The raisins were lost on the voyage from Faro to London:—and in an action against the registered owners for their value, it was held that the firm to which the vessel had been chartered were, with respect to the shippers of the raisins, the owners of the ship for that time, and that, therefore, the registered owners were not responsible to him.[2] And where the owners had chartered their vessel for a voyage from London to Surinam to another party, who put her up as a general ship, and fifty casks of oats were put on board, to be carried from London to Surinam; the ship not being able to make Demerara, the oats were improperly sold by the captain: but in an action against the owners of the ship for the non-delivery of the oats, it was held that, under the circumstances, the registered owners were not responsible.[3]

In another case, an owner had chartered his ship to the Commissioners of the Transport Service, on behalf of the Crown, to be employed as a transport;—the terms of the charter-party were, that the ship was "*granted, and to hire and freight let,*" for that purpose; and, in the course of such employment, the ship made several voyages from Deptford

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[1] Holderness *v.* Shakels, 8 B. and C. 612. [2] James *v.* Jones, 3 Esp. 27.
[3] Mackenzie *v.* Rowe, 2 Camp. 482.

to foreign ports and back. In an action against the owner for Trinity House light-duties, and for buoyage and beaconage coming up the Thames, it was held that, by the terms of the charter-party, coupled with the nature of the service, a temporary ownership passed to the Crown, so that the registered owner, during the time of that service, was not to be considered as owner, and was not therefore liable for the duties and dues claimed.[1] And where the owner and the captain made an agreement, that the captain should receive the ship into his service for a certain time, and pay *for the use and hire* of the vessel at a certain fixed rate, and provide, at his own expense, all necessaries for passengers, and pay all port charges and pilotage, but that the owner should have an agent on board, who, on a certain event, should have power to supersede the captain, and that the bills for freight should be transmitted to trustees for both :—it was held, that this was not an agreement for an appointment of a captain, under an engagement that the ship should earn a certain sum, but, by the charter-party between the captain and freighters, he became owner for the time, and had right to the freight for the goods put on board by them; and that, therefore, the freighters, who had shipped their goods *with knowledge of the terms of the charter-party*, could not recover from the *registered owner* the value of the goods lost.[2] But where the captain and the mariners are appointed by the owner, and continue subject to his orders, so that he, through them, retains the possession, management, and control of the vessel, the charter-party will be considered merely as a contract for the carriage of the freighter's goods, and the owner will be responsible.

The liability or non-liability of the owner for damages, occasioned by the negligence or unskilfulness of the captain and mariners, is determined on the same grounds,—the question being—Whose servants they were for the time? As in a case where the owners had let their ship for six months to the Commissioners of the Navy, who put on board a commander of the navy to command the ship, and a king's pilot who gave orders to the seamen; and, by the charter-party, the owners were to provide a crew, and maintain and pay them, and to repair the ship, and to provide her in stores; but the guns and ammunition were to be provided by the Government, and the captain was to obey the orders and instructions of the naval commander:—in an action against the owners, for running down a ship during the time of the charter-party, it was held that, as the ship was navigated by a captain and sailors provided by the owners, and as it was to be considered as their ship, with regard to all the world, except the Commissioners of the Navy, they were responsible.[3]

In a case for an assault, it appeared that an individual had hired a steam-boat for a day, for a pleasure-party, at the hire for the day of £5, 10s., the party not exceeding fifty; and the vessel was to be navigated by a captain and crew appointed and paid by the owner. As the vessel was about to start from the quay, a stranger, not aware of the vessel having been hired by the individual for the day, stepped on board, with permission of the captain, and being harshly warned to leave the vessel, he refused to go,—whereupon the person to whom the vessel had been

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[1] Trinity House *v.* Clark, 4 M. and S. 288. [2] Newberry *v.* Colvin, 7 Bing. 190.
[3] Fletcher *v.* Braddick, 2 N. R. 182.

hired, pushed him with considerable violence into a boat alongside, and, in doing so, tore off the skirts of his coat:—in an action of damages for this assault, it was held, that the individual had not, under the contract, such an exclusive possession of the vessel as would justify him in forcibly putting the other out of it, admitted, as he had been, by the captain; and that, therefore, he was liable in damages.[1]

And in an action against the owners of a steam-packet, for injury done to a coal sloop through the negligence of the steam-packet's crew, the owners of which had chartered the vessel for six months, at a certain rate per week,—the owners keeping the vessel in good and sufficient order for the conveyance of goods, passengers, &c., and the charterer paying all disbursements incident to the working of the steamer, including harbour-dues, pilotages, seamen's and captain's wages, and providing coals, oil, &c., for the engines, and to insure:—it was proved that the captain, crew, and engineers were appointed by the company or their agents, and paid by the charterer; that the captain obeyed the orders of the charterer as to where the vessel was to go, but not as to the mode of navigation; and that, at the time of the accident, the charterer was on board, and the vessel was going, by his directions, to Newcastle; and on these facts it was contended, that the vessel being let to the charterer, and the crew being his servants, he therefore, and not the owners, should be liable for their negligence: but it was held that, as the owners were to provide everything, and to have servants of their own choosing, the crew were their servants, and the owners were responsible for their negligence.[2]

Many obligations as to the seaworthiness of the ship are now cast upon the owners as well as upon the master. As to the nature of these obligations, see *post*, THE DUTIES OF THE MASTER.

X.—THE SHIP'S HUSBAND.

When there are several part-owners of a ship, it is a common practice for them to appoint one individual to manage the affairs of the vessel, who may be either one of the co-owners or a neutral person, and who is called, in the former case, the managing owner, and, in the latter, the ship's husband. This appointment may be either by a minute or entry in the sederunt-book of the owners, or by a written deed of nomination or commission; but, in either way, his powers and duties are the same.

The name and address of the managing owner, for the time being, of every British ship registered at any port or place in the United Kingdom must be registered at the custom-house of the ship's port of registry. Where there is not a managing owner, there must be so registered the name of the ship's husband, or other person to whom the management of the ship is intrusted by or on behalf of the owner; and any person whose name is so registered is, for the purposes of the Merchant Shipping Acts, 1854 to 1876, under the same obligations, and subject to the same liabilities, as if he were the managing owner. If default is made in complying with this provision, the owner is liable, or, if there be more owners than one, each owner is liable in proportion to his interest in the ship, to a

[1] Dean *v.* Hogg, 10 Bing. 345.
[2] Fenton *v.* City of Dublin Steam-Packet Company, 8 Ad. and El. 835.

penalty not exceeding in the whole £100 each time the ship leaves any port in the United Kingdom (39 and 40 Vict., cap. 80, sec. 36).

The duties of a managing owner or ship's husband are:—

1. To engage a properly-certified master and mates, and an adequate crew for the intended voyage; and to take care that the ship's compasses and barometer are rightly adjusted, and the captain furnished with the proper charts for the voyage, which he ought to satisfy himself both master and mates can distinctly read.

2. That the ship's hull is duly tight, stanch, and strong for the voyage, and the requisite ballast and dunnage on board; and that the sails for all weathers are in proper serviceable order,—the standing and running rigging sound and complete,—and the ground and other tackling adequately sufficient, so as to render the ship, thus far, seaworthy for the voyage.

3. That the ship is duly provided with employment,—and, for this purpose, he can enter into charter-parties, or memoranda of charters, and sign the bills of lading, when these alone are granted; and also to receive the freight of goods carried, and adjust any averages arising.

4. That the ship is also fully provisioned with sea-stores and supplies, water and medicine, and other necessaries requisite for the (liberally) calculated and expected length of the voyage, according to the customs table.

5. That the captain has duly filled up the ship's "content," and delivered it to the customs searcher, and that the same, with the certificates (if any) and the victualling bill, and the filled-up and signed customs label attached and sealed thereto, has been re-delivered to the captain, as the clearance and authority for the departure of the ship; and that he has a certified copy of the charter-party, or memorandum of charter-party (if any), and duplicates of the bills of lading for all the cargo on board.

6. And the ship being thus fitted, prepared, and ready, that she "break ground" on her intended voyage upon the day fixed, if a day has been fixed; or, if not, on the very earliest day, wind and weather permitting, after having been duly cleared.[1]

In addition to the above, many statutory duties devolve on the ship's husband, in common with the master; as to which, see *post*, THE DUTIES OF THE MASTER.

For the expenses of outfit, and all necessary expense of repairs and of management, the owners are bound to provide the ship's husband with funds, according to their respective shares or interests in the ship, or in the adventure on which she is engaged,—and if a part-owner has failed to pay his share, the ship's husband can recover this share by an action against him,[2] or he is entitled to retain his share out of the profits of the voyage or produce of the adventure. As in a case in which A, B, C, and others were part-owners of a whale-fishing ship, and the usual mode of managing the cargo was:—On the ship's return to her home port, the whalebone was put into B's possession, and sold by him, and the proceeds applied to the ship's expenses;—the blubber was placed in warehouses rented by the owners from C, and the oil produced was put into casks,—

[1] Darby *v.* Baines, 9 Hare, 369.

[2] Brown *v.* Tapsco, 6 M. and W. 119.

each owner's share being weighed out and placed separately in the warehouse, in casks marked with his initials;—and, after this division, the warehouseman delivered to the order of each part-owner his share of the oil, unless the ship's husband had given notice that any part-owner's share of the disbursements was not paid;—and, in this case, that part-owner's share was retained until this demand was satisfied. And this was followed on the ship's return from the fishing in 1825,—the share weighed out and set apart for A, being twenty-nine tuns, being stowed in the warehouse in casks having his initials on them:—of these, twenty tuns had been delivered previous to his bankruptcy in January 1826, at which time the remaining nine tuns were in the warehouse, which the warehouseman had received orders from the ship's husband not to deliver, as A's share of the disbursements had not been paid:—in an action by his assignees in bankruptcy for delivery, it was held, that the other part-owners had a right to retain his part of the oil until his share of the expense was paid, and that until this share was paid, he could not claim that part, and that this right was not lost by the separation of his share of the oil, and placing it in casks marked with his name.[1]

The general appointment of a ship's husband will not authorise him, though himself a part-owner, to insure the owner's shares, or his co-owners' shares, of the ship. Each separate share in the ship is the distinct property of the individual part-owner, whose business it is to protect it by insurance; so that the insurance of another cannot be binding on such proprietors, without some evidence importing an authority by them.[2] But the minute or deed of appointment may authorise the ship's husband to effect an insurance on the ship for all the owners,—and, in this case, the sums paid for insurance will form items in his general account;[3] or, if the managing owner or ship's husband has been in the practice, without express directions, of insuring the whole ship, and charging the premiums in his accounts, which have been examined and approved of by the owners, this insurance will be held to have been effected on the joint authority of the whole.[4]

By the appointment of ship's husband or managing owner, the person so appointed necessarily acquires all the powers requisite for the performance of his duties as such;—and though he has no power to borrow money on the owners' account,—whether he have funds or not,—he can settle accounts for repairs, stores, or furnishings, by granting bills for these, which will be debts against the owners. As when a tradesman had supplied goods for a ship, and, for the amount, took the ship's husband's bill at three months, being the usual credit, and, when that bill became due, he renewed it, adding interest, and a third time renewed it, which was dishonoured; and, shortly thereafter, the ship's husband failed,—the balance in the ship's husband's hands in favour of the owner having, during the whole time, exceeded the amount of the bills, though this was unknown to the shipowner, who had not examined his ship's husband's accounts:—in an action against the latter, he was held liable for the amount of the tradesman's claim, and was not discharged by the bills granted by his ship's husband.[5]

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[1] Holderness *v.* Shakels, 8 B. and C. 612.
[2] *Per* Lord Ellenborough, in Bell *v.* Humphries, 2 Starkie, 345.
[3] Darby *v.* Baines, 9 Hare, 369.
[4] Robinson *v.* Gleadow, 2 Bing. *n. s.* 156.
[5] Robinson *v.* Read, 9 B. and C. 449.

The ship's husband preserves proper vouchers for all the ship's disbursements entered in his books, and copies of all charter-parties, memoranda of charters, freight notes, &c.; and, in general, all papers, certificates, surveys, policies of insurance, and whole documents relating to the ship and her concerns. And he has also to keep a regular sederunt-book of the meetings of the owners, before whom the ship's proceedings, as these occur, and his ship's husband's accounts, ought to be duly laid,—and the minute of each meeting should be subscribed by each owner then present. If it has been the practice, or if it be so conditioned in the ship's husband's appointment, that after the ship's return from each voyage a full account of the ship's concerns should be made out, and after deducting all expenses, the nett profits be divided among the co-owners according to their respective shares,—each individual co-owner has his action against the ship's husband for not making out his accounts and dividing the profits within a reasonable time after the ship's return.[1] And, on the other hand, as each part-owner is bound to pay to the ship's husband his share of the expense of repairs, outfit, and furnishings,—if the ship's husband advance for these from his own funds, he is entitled, being a part-owner, to recover from his co-owners their shares of the sums so advanced.[2]

The remuneration of a ship's husband or managing owner is generally regulated by his appointment,—commonly a percentage on all disbursements, a percentage on all freight contracts, and a commission on the freights' collecting. And where a part-owner entered upon the duties of ship's husband without any special agreement as to his remuneration,—the preceding ship's husband having been paid by commission,—it was held, that a reasonable commission should be allowed him in respect of his labours and services as ship's husband, regard being had to the commission paid to his predecessors, and also to the nature and amount of the services performed by himself.[3]

If the managing owner, or, in the event of there being no managing owner, the ship's husband of any British ship, have reason, owing to the non-appearance of such ship, or to any other circumstance, to apprehend that such ship has been wholly lost, he must send to the Board of Trade a notice in writing of such loss, and of the probable occasion thereof, stating the name of the ship and her official number (if any), and the port to which she belongs; in default he incurs a penalty not exceeding £50.[4]

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[1] Owston *v.* Ogle, 13 East, 538.
[2] Helme *v.* Smith, 7 Bing. 704.
[3] Salter *v.* Asly, 1 Jur. *n. s.* 930.
[4] Merchant Shipping Act, 1873; 36 and 37 Vict., cap. 85, sec. 22.

II.—THE NAVIGATION OF BRITISH SHIPS.

I.—APPLICATION OF THIRD PART OF MERCHANT SHIPPING ACT.

This part of the Merchant Shipping Act has the following applications, unless the context or the subject-matter requires a different application:—

1. So much of it as relates to the delivery or transmission of lists of crews to the Registrar-General of Seamen, applies to all fishing-vessels belonging to the United Kingdom, whether employed exclusively on the coasts of the United Kingdom or not,—to all ships belonging to the Trinity House, or the Commissioners of Northern Lighthouses, or the Port of Dublin Corporation,—and to all pleasure yachts,—and to the owners, masters, and crews of these ships.

2. So much of it as relates to the delivery and transmission of lists of crews, and to the effects and wages of deceased seamen and apprentices, applies to all *sea going* British ships, wherever registered, of which the crews are discharged, or whose final port of destination is in the United Kingdom, and to the owners, masters, and crews of these ships.

3. So much of it as relates to the shipping and discharge of seamen in the United Kingdom, applies to all sea-going British ships, wherever registered, and to the owners, masters, and crews of these ships.

4. So much of it as relates to seamen volunteering into the Royal Navy, applies to all sea-going British ships, wherever registered, and to the owners, masters, and crews of these ships, wherever the same may be.

5. So much of it as relates to rights to wages, and remedies for the recovery thereof,—to the shipping and discharge of seamen in foreign ports, —to leaving seamen abroad, and to the relief of seamen in distress in foreign ports,—to the provisions, health, and accommodation of seamen,—to the power of seamen to make complaints,—to the protection of seamen from imposition,—to discipline,—to naval courts on the high seas and abroad,—and to crimes committed abroad,—applies to all ships registered in any of Her Majesty's dominions abroad, when such ships are out of the jurisdiction of their respective Governments,—and to the owners, masters, and crews of these ships.

6. And the whole of this part of the Act applies to all sea-going ships registered in the United Kingdom (except such as are exclusively employed in fishing on the coasts of the United Kingdom, and such as belong to the Trinity House, the Commissioners of Northern Lighthouses, or the Port of Dublin Corporation, and also except pleasure yachts),—and also to all ships registered in any British possession, and employed in trading or going between any place in the United Kingdom, and any place or places not situate in the possession in which such ships are registered,—and to the owners, masters, and crews of these ships respectively, wherever the same may be.[1]

Unless to the under-noted sections[2] of the Merchant Shipping Act, 1854,

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[1] 17 and 18 Vict., cap. 104, sec. 109.

[2] Secs. 136, 143, 145, 147, 149, 150, 151, 152, 153, 154, 155, 157, 158, 161, 162, 166, 170, 171, 231, 256, 279, 280, 281, 282, 283, 284, 285, 286, 287.

the following vessels are subject to the whole of the third part of that Act, viz. :—

1. Registered sea-going ships exclusively employed in fishing on the coasts of the United Kingdom.

2. Sea-going ships belonging to any of the three general Lighthouse Boards, viz. :—The Trinity House, the Commissioners of Northern Lighthouses, and the Port of Dublin Corporation ;—and

3. Sea-going ships, being pleasure yachts.[1]

II.—MERCANTILE MARINE OFFICES.

In every seaport in the United Kingdom in which there is a Local Marine Board, that board establishes a Mercantile Marine Office or Offices, and, for that purpose, can procure the requisite premises, and appoint, and from time to time, remove and reappoint, superintendents and deputy-superintendents of these offices, with any necessary deputies, clerks, and servants, and regulate the mode of conducting business at these offices,—and the Local Marine Board has complete control over the same : and every act done by or before any deputy duly appointed has the same effect as if done by or before a superintendent.[2]

The sanction of the Board of Trade is necessary, so far as regards the number of persons appointed by any local marine board, and the amount of their salaries and wages, and all other expenses; and the Board of Trade has the immediate control of the Mercantile Marine Offices, so far as regards the receipt and payment of money thereat. All superintendents, deputies, clerks, and servants so appointed must, before entering upon their duties, give such security (if any) for the due performance thereof, as the Board of Trade requires ; and if in any case the Board of Trade has reason to believe that any superintendent, deputy-superintendent, clerk, or servant appointed by any Local Marine Board, does not properly discharge his duties, the Board of Trade can cause the case to be investigated, and can, if it thinks fit, remove him from his office, and provide for the proper performance of his duties until another person is properly appointed in his place.[3]

It is the general business of superintendents appointed as aforesaid :—

1. To afford facilities for engaging seamen, by keeping registries of their names and characters.

2. To superintend and facilitate their engagement and discharge in manner after mentioned.

3. To provide means for securing the presence on board, at the proper times, of men who are so engaged.

4. To facilitate the making of apprenticeships to the sea-service.

5. To perform such other duties relating to merchant seamen and merchant ships as are or may be committed to them.[4]

Such fees, not exceeding the sums in the Table P, annexed to the Act, as are from time to time fixed by the Board of Trade, are payable upon all engagements and discharges effected before superintendents as after mentioned, and the Board of Trade causes scales of the fees payable for the time being to be prepared, and to be conspicuously placed in the

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[1] 25 and 26 Vict., cap. 63, sec. 13.
[2] 17 and 18 Vict., cap. 104, sec. 122.
[3] Sec. 123.
[4] Sec. 124.

Mercantile Marine Offices; and all superintendents, their deputies, clerks, and servants, may refuse to proceed with any engagement or discharge, until the fees payable thereon are first paid.[1]

Every owner or captain of a ship engaging or discharging any seaman or seamen in a Mercantile Marine Office, or before a superintendent, pays to the superintendent the whole of the fees payable in respect of such engagement or discharge, and, for the purpose of in part reimbursing himself, he can deduct from the wages of all persons (except apprentices) so engaged or discharged, and retain, any sums, not exceeding the sum specified in the Table marked Q, in the Schedule annexed to the Act. But if, in any case, the sums which the owner is so entitled to deduct exceed the amount of the fee *payable by him*, such excess must be paid by him to the superintendent in addition to such fee.[2] Any superintendent, deputy-superintendent, or any clerk or servant in any Mercantile Marine Office, who demands or receives any remuneration whatever, either directly or indirectly, for hiring or supplying any seaman for any merchant ship, excepting the lawful fees payable under the Act,—he, for every such offence, incurs a penalty not exceeding £20, and is also liable to be dismissed from his office by the Board of Trade.[3]

The Board of Trade can direct, with the consent of the Commissioners of Customs, that at any place in which no separate Mercantile Marine Office is established, the whole, or any part of the business of the Mercantile Marine Office may be conducted at the custom-house, and, thereupon, the same must be there conducted accordingly,—and, in respect of this business, that custom-house is deemed, for all purposes, to be a Mercantile Marine Office, and the officer of customs there, to whom such business is committed, is held for all purposes to be a superintendent.[4]

The Board of Trade can appoint any superintendent of, or other person connected with, any sailors' home in the Port of London, to be a superintendent, with any necessary deputies, clerks, and servants, and can appoint any office in such home to be a Mercantile Marine Office; and all superintendents and Mercantile Marine Offices so appointed are subject to the immediate control of the Board of Trade, and not of the Local Marine Board of the port.[5] And, from time to time, the Board of Trade can dispense with the transacting before a superintendent, or in a Mercantile Marine Office, of any matters required by the Act to be so transacted; and, thereupon, such matters, if otherwise duly transacted as required by law, are as valid as if transacted before a superintendent or in a Mercantile Marine Office.[6]

In any case where the business of a Mercantile Marine Office is conducted otherwise than under a Local Marine Board, the Board of Trade may, if they think fit, instead of conducting such business at a custom-house or otherwise, establish a Mercantile Marine Office. They may also, in the like case, hold examinations (in the same way as a Local Marine Board), for the purpose of granting certificates to persons desirous of obtaining certificates of competency as masters, mates, or engineers (Merchant Shipping Act, 1873, 36 and 37 Vict., cap. 85, sec. 10).

Any person appointed to an office or service in or under a Local Marine Board is held to be a clerk or servant,—and if he fraudulently applies

[1] Sec. 125. [2] Sec. 126. [3] Sec. 127. [4] Sec. 128. [5] Sec. 129. [6] Sec. 130.

and disposes of any movables, money, or valuable security received by him, while employed in his office or service, for or on account of that Local Marine Board, or any other public board or department, to his own use, or to any use, or for any purpose, other than that for which it was paid, intrusted to, or received by him,—or fraudulently withholds, retains, or keeps back the same, contrary to lawful directions or instructions,—he is held to be guilty of embezzlement within the meaning of section 68 of the 25 Vict., cap. 96.[1]

III.—EXAMINATIONS, CERTIFICATES, AND LICENSING OF MASTERS AND MATES.

Examinations are instituted for persons who intend to become masters or mates of foreign-going ships,[2] or of home-trade passenger ships,[3] or who wish to procure certificates of competency as after mentioned; and, subject as after mentioned, the Local Marine Boards must provide for the examinations at their respective ports, and can appoint, and, from time to time, remove and reappoint, examiners to conduct the same, and can regulate the same. Any members of the Local Marine Board of the place where the examination is held can be present and assist at any such examinations.[4]

The Board of Trade can, from time to time, lay down rules as to the conduct of these examinations, and as to the qualifications of the applicants, and these rules must be strictly adhered to by all examiners;—and no examiner must be appointed, unless he possess a certificate of qualification, to be, from time to time, granted or renewed by the Board of Trade, and the sanction of the Board is also necessary, so far as regards the number of examiners to be appointed, and the amount of their remuneration. The Board of Trade can, at any time, depute any of its officers to be present and assist at any examination; and if it appears that the examinations of any two or more ports can be conducted, without inconvenience, by the same examiners, it can require and authorise the Local Marine Boards of such ports to act together as one board, in providing for and regulating examinations, and in appointing and removing examiners for such ports.[5]

And by section 17 of the 25 and 26 Vict., cap. 63, it is enacted, that, if satisfied of serious inconvenience at any port, from the distance applicants for certificates have to travel in order to be examined, the Board of Trade, with the concurrence of the Local Marine Board, can send the examiner or examiners of that Local Board to the port where this inconvenience exists, who there examine the applicants, in presence of such person or persons (if any) as the Board of Trade may appoint. These examinations are conducted in the same manner, and have the same effect, as other examinations under the Merchant Shipping Act.

Under the condition after mentioned,—to every applicant who is duly

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[1] 25 and 26 Vict., cap. 63, sec. 16.

[2] This term, in the Merchant Shipping Act, includes every ship employed in trading or going between some place or places in the United Kingdom, and some place or places situate *beyond* the following limits—viz., the coasts of the United Kingdom, the islands of Guernsey, Jersey, Sark, Alderney, and Man, and the continent of Europe between the river Elbe and Brest inclusive.

[3] The term "Home Trade Ships" includes every ship employed in trading or going *within* the limits before mentioned.

[4] 17 and 18 Vict., cap. 104, sec. 131.

[5] Sec. 132.

reported by the local examiners to have passed the examination satisfactorily, and to have given satisfactory evidence of his sobriety, experience, ability, and general good conduct on shipboard,—the Board of Trade delivers a certificate, called a "*certificate of competency*," to the effect, that he is competent to act as master, or as first, second, or only mate of a foreign-going ship, or as master or mate of a home-trade passenger ship, as the case may be. But in every case in which the Board of Trade has reason to believe such report to have been unduly made, the Board may remit the case, either to the same, or to any other examiners, and can require a re-examination of the applicant, or a further inquiry into his testimonials and character, before granting him a certificate.[1]

Certificates of service, differing in form from certificates of competency, are granted as follows, viz.:—

1. Every person who, before 1st January 1851, served as master in the British merchant service, or who had attained, or attains, the rank of lieutenant, master, passed mate, or second master, or any higher rank, in the service of Her Majesty, or of the East India Company, is entitled to a certificate of service as master for foreign-going ships.

2. Every person who, before 1st January 1851, served as mate in the British merchant service, is entitled to certificate of service as mate for foreign-going ships.

3. Every person who, before 1st January 1854, has served as master of a home-trade passenger ship, is entitled to a certificate of service as master for home-trade passenger ships.

4. Every person who, before 1st January 1854, has served as mate of a home-trade passenger ship, is entitled to a certificate of service as mate for home-trade passenger ships.

And each of these certificates of service contains particulars of the name, place, and time of birth, and of the length and nature of the previous service of the person to whom the same is delivered. The Board of Trade delivers such certificates of service to the various persons so respectively entitled thereto, upon their proving themselves to have attained such rank, or to have served as aforesaid, and upon their giving a full and satisfactory account of the foresaid particulars.[2]

Applicants for examination must pay such fees, not exceeding the sums in the Schedule marked R, annexed to the Act, as the Board of Trade directs; and these fees must be paid to such persons as the Board appoints for that purpose.[3]

No foreign-going ship or home-trade passenger ship can go to sea, from any port in the United Kingdom, unless the master thereof, and, in the case of a foreign-going ship, the first and second mates, or only mate, as the case may be,—and, in the case of a home-trade passenger ship, the first or only mate, as the case may be,—have obtained and possess valid certificates, either of competency or service, appropriate to their several stations in such ship, or of a higher grade; and no such ship, if of 100 tons burden or upwards, must go to sea as aforesaid, unless, at least, one officer, besides the master, has obtained and possesses a valid certificate appropriate to the grade of only mate therein, or to a higher grade. Every person who, having been engaged to serve as master, or as first, or second, or only mate

[1] Sec. 134. [2] Sec. 135. [3] Sec. 133.

of any foreign-going ship,—or as master, or first or only mate of a home-trade passenger ship,—goes to sea as aforesaid, as such master or mate, without being, at the time, entitled to and possessed of a certificate as before required,—or who employs any person as master, or first, second, or only mate of any foreign-going ship,—or as master, or first or only mate of a home-trade passenger ship,—without ascertaining that he is, at the time, entitled to and possessed of such certificate,—for each offence incurs a penalty not exceeding £50.[1]

A certificate of competency for a foreign-going ship is held to be of a higher degree than the corresponding certificate for a home-trade passenger ship, and entitles the holder thereof to go to sea, in the corresponding degree, in such last-mentioned ship; but no certificate for a home-trade passenger ship entitles the holder to go to sea as master or mate of a foreign-going ship.[2] All certificates, whether of competency or service, are made in duplicate, and one copy is delivered to the person entitled to the certificate, and the other is kept and recorded by the Registrar-General of Seamen, or by such other person as the Board of Trade appoints for that purpose; and the Board gives to the registrar or such other person immediate notice of all orders made by it for cancelling, suspending, altering, or otherwise affecting any certificate, in pursuance of the powers contained in the Act, and the registrar, or such other person as aforesaid, thereupon makes a corresponding entry in the record of certificates;—and a copy,—bearing to be certified by the registrar or his assistant, or by such person as aforesaid,—of any certificate, is *prima facie* evidence of such certificate,—and a copy,—bearing to be so certified, of any entry made as aforesaid, in respect of any certificate,—is *prima facie* evidence of the truth of the matter stated in any such entry.[3]

By section 291 of the Merchant Shipping Act, these provisions with respect to the certificates of masters and mates, to which British steamships are made liable, apply to all *foreign* steam-ships carrying passengers between places in the United Kingdom.

Whenever any master or mate proves, to the satisfaction of the Board of Trade, that, without fault on his part, he has lost or been deprived of any certificate already granted to him, the Board can, upon payment of such fee (if any) as it directs, cause a copy of the certificate to which, by the record so kept as aforesaid, he appears to be entitled, to be made out and certified as aforesaid, and delivered to him; and any copy, which bears to be so made and certified, has all the effect of the original.[4]

Every person who makes or procures to be made, or who assists in making, any false representations, for the purpose of obtaining for himself or for any other person, a certificate either of competency or service,—or who forges, assists in forging, or procures to be forged,—or who fraudulently alters, assists in fraudulently altering, or procures to be fraudulently altered,—any such certificate, or any official copy of any such certificate,—or who fraudulently makes use of any such certificate, or any copy of any such certificate, which is forged, altered, cancelled, suspended, or to which he is not justly entitled,—or who fraudulently lends his certificate to, or allows the same to be used by, any other person,—he, for each offence, is deemed guilty of a misdemeanour.[5]

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[1] Sec. 136. [2] Sec. 137. [3] Sec. 138. [4] Sec. 139. [5] Sec. 140.

The certificates of masters or mates, either of competency or service, can be suspended or cancelled in the following cases; and the powers previously in the Board of Trade alone are now vested in, and can be exercised by, the Local Marine Board, Magistrates, Naval Court, Admiralty Court, or other court or judicatory investigating or trying the case,—unless in the case provided in the fourth paragraph, viz.:—

1. If, on any investigation made under section 241 of the Merchant Shipping Act, he is reported to be incompetent, or to have been guilty of any gross act of misconduct, drunkenness, or tyranny.

2. If, on any investigation under the provisions in the eighth part of the Merchant Shipping Act (*see* sec. 438), or, on any investigation by a Naval Court as after mentioned, it is reported that the loss, or abandonment of, or serious damage to, any ship, or loss of life, has been caused by his wrongful act or default.

3. If he is superseded by the order of any Admiralty Court or Naval Court.

4. *If he is shown to have been convicted (found guilty) of any offence.*

5. If, on any investigation by any courts or tribunals authorised by the legislative authority of any British possession to inquire into charges of incompetency or misconduct on the part of masters or mates of ships, or as to shipwrecks or other casualties (perils and dangers) affecting ships,—a report is made by that court or tribunal that he has been guilty of any gross act of misconduct, drunkenness, or tyranny,—or that the loss, or abandonment of, or serious damage to any ship, or loss of life, has been caused by his wrongful act or default,—and this report is confirmed by the Governor or the person managing the government of that British possession.[1]

As to the cancelling and suspending of certificates, the following rules are observed:—

1. As already stated, the power of cancelling or suspending the certificates of a master or mate (unless under the fourth head before mentioned) is vested in, and is to be exercised by, the Local Marine Board, Magistrates. Naval Court, Admiralty Court, or other courts or tribunals (courts of justice), by which the case is investigated or tried, and not by the Board of Trade.

2. At the conclusion of the case, or as soon after as possible, the Board, court, or tribunal state, in open court, the decision to which they have come as to cancelling or suspending certificates;—and, in all cases, a full report of the case, with the evidence, is sent to the Board of Trade, and, when a certificate is cancelled or suspended, this certificate is also forwarded with the report to the Board of Trade.

3. If the Board of Trade think the justice of the case requires it, the Board of Trade can again issue and return any certificate cancelled or suspended,—or can shorten the time for which it has been suspended,—or can grant a new certificate of the same or of a lower rank, in place of one cancelled or suspended.

4. No certificate is to be cancelled or suspended under these rules, unless a copy of the report, or a statement of the case upon which the investiga-

[1] Sec. 242. See *Ex parte* Ferguson *v.* Hutchinson, L. R. 6 Q. B. 280.

tion is ordered, has been furnished to the owner of the certificate before the investigation commences; nor, in an investigation by justices or a stipendiary magistrate (paid magistrate), unless one assessor, at least, expresses his concurrence in the report.[1]

And the master or mate, whose certificate is so suspended or cancelled, must, on demand, deliver it to the trying or investigating board, or, if not demanded, to the Board of Trade, on demand; and, failing his doing so, he incurs, for each offence, a penalty not exceeding £50.[2]

Besides certificates of competence or service, masters and mates can also obtain *pilotage certificates* from the proper Pilotage Authorities.[3]

Thus, the master or mate of any ship, on giving due notice, and agreeing to pay the usual expenses, can apply to any Pilotage Authority to be examined as to his qualifications and capabilities for the piloting of the ship of which he is master or mate, or any one or more ships belonging to the same owner, within any part of the district over which the Pilotage Authority has jurisdiction: and that authority can (if it thinks fit) examine him, and, if he is found competent, grant him a pilotage certificate, containing his name,—a specification of the ship or ships in respect of which he has been examined,—and a description of the limits within which he is to pilot the same,—these limits being within its jurisdiction. This certificate enables the person named to pilot the ship therein stated, of which he is acting as master or mate at the time, but no other, within the limits specified, without incurring any penalties for not employing a qualified pilot.[4] The pilotage certificate so granted is not in force for more than one year, unless the same is renewed, which can, from time to time, be done by an endorsement under the hand of the secretary or other proper officer of the authority by whom the same was granted.[5]

If, upon complaint to the Board of Trade, it appears to the Board that any Pilotage Authority has, without reasonable cause, refused or neglected to examine any master or mate who has applied to them for the purpose,—or, after he has passed the examination, has, without reasonable cause, refused or neglected to grant him a certificate,—or, that the examination of an applying master or mate has been unfairly or improperly conducted,—or, that any terms imposed or sought to be imposed by such authority are unfair or improper,—or, that any pilotage certificate granted by such authority has been improperly withdrawn,—the Board of Trade can, if the circumstances appear to require it, appoint persons to examine that master or mate, and, if he is found competent, can grant him a pilotage certificate, containing the same particulars as would have been inserted in any certificate granted by the Pilotage Authorities,—upon such terms and conditions, and subject to such regulations, as the Board may think fit. This certificate has the same effect as if it had been granted by the Pilotage Authority, and is in force for one year, and can be renewed from year to year, either by the Pilotage Authorities in manner before mentioned, or by the Board of Trade, if that Board thinks fit,—such renewal being endorsed

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[1] 25 and 26 Vict., cap. 63, sec. 23. [2] 25 and 26 Vict., cap. 63, sec. 24.

[3] The term "Pilotage Authority" includes all bodies or persons authorised to license or appoint pilots, or to fix or alter rates of pilotage, or to exercise any jurisdiction in respect of pilotage.

[4] 17 and 18 Vict., cap. 104, sec. 340. [5] Sec. 341.

on that certificate, either by such person as the Board may appoint for the purpose, or in the same manner as certificates granted by any Pilotage Authority.[1]

All masters or mates, to or for whom any such pilotage certificates as aforesaid are granted by any Pilotage Authority, have to pay to that authority, or as it directs, such fees upon their respective certificates, and upon the renewals thereof, as are, from time to time, fixed for that purpose, with the consent of the Board of Trade; and all masters or mates, to or for whom any such certificates are granted or renewed by the Board of Trade, must pay to that Board, or as it directs, such fees upon their certificates, and upon the renewals thereof, as are fixed by the Board,—yet, so as, in the case of pilotage certificates granted or renewed by the Board, these fees can, in no case, be less than the fees payable by qualified pilots in the same district upon their licences and the renewals thereof. In the case of certificates and renewals granted by Pilotage Authorities, these fees are applicable, either to paying the expense of the examinations, or any other general expenses connected with pilotage, incurred by these authorities,—or to the pilots' superannuation fund of the district (if any),—or otherwise for the benefit of pilots appointed by these authorities, as they think fit; and, in the case of pilotage certificates granted or renewed by the Board of Trade, these fees are applicable to the expense of the examinations, and the surplus (if any) is applied for the benefit of the qualified pilots of the port or district to which the certificates apply, in such manner as the Board thinks fit.[2]

If, at any time, it appears to the Local Marine Board, or to any Pilotage Authority, that any master or mate, to whom a pilotage certificate has been granted by the Board or by that authority, has been guilty of misconduct, or has shown himself incompetent to pilot his ship,—the Board or Pilotage Authority (as the case may be) can thereupon withdraw his certificate; and that certificate thenceforth ceases to have any effect whatever.[3]

The master of every ship carrying passengers between any place in the United Kingdom, or the islands of Guernsey, Jersey, Sark, Alderney, and Man, and any other place so situate,—when navigating upon any waters within the limits of any district for which pilots are licensed by any Pilotage Authority, under the provisions of the Merchant Shipping or any other Act,—must employ a qualified pilot to pilot his ship, unless he or his mate has a pilotage certificate enabling the one or the other to pilot that ship within such districts, granted under the provisions before mentioned, or the certificate after mentioned, being a certificate applicable to such district and to his ship; and if he fails so to do, he, for every offence, incurs a penalty not exceeding £100.[4]

Any master or mate who, by the foregoing section, is made subject to compulsory pilotage, can apply to the Local Marine Board, &c., for a certificate, and thereupon, and on satisfactory proof of his having continuously piloted any ship within the limits of any pilotage district, or of any part or parts thereof, for two years prior to the commencement of the Act (1st May 1855), or, upon satisfactory proof by examination of his competency, or otherwise, as it may deem expedient, the Board, &c., can grant

[1] Sec. 342. [2] Sec. 343. [3] Sec. 344. [4] Sec. 354.

him, or endorse on any certificate of competency or service obtained by him under the third part of the Act,—a certificate to the effect that he is authorised to pilot any ship or ships belonging *to the same owner*, and of a draught of water not greater than such draught as may be specified in the certificate, within the limits foresaid. This certificate remains in force for such time as the Board, &c., directs, and enables the master or mate therein named to conduct the ship or ships therein specified within the limits therein described, to the same extent as if the section preceding had not been passed, but not further or otherwise. Upon applying for such certificate, or for any renewal thereof, such master or mate must pay to the Board, &c., or as it directs, such fees, not exceeding the fees payable on an examination for a master's certificate of competency, as the Board directs; and these fees are applied in the same manner in which the fees payable on such examination are made applicable.[1]

Provisions are now made for holding examinations and granting certificates in British possessions, (32 Vict., cap. 11, sec. 8).

IV.—CERTIFICATES FOR ENGINEERS.

Every steam-ship having a master required to possess a certificate from the Board of Trade, must also, after 1st June 1863, have an engineer or engineers possessing a certificate or certificates from the Board of Trade, as follows:—

1. Engineers' certificates are of two ranks:—"First-class engineers' certificates;" and "second-class engineers' certificates."

2. Every "*foreign-going*" steam-ship of 100 *nominal* horse-power or upwards must have, as its only or first and second engineers, two certified engineers,—the first possessing a "first-class engineer's certificate," and the second possessing a "second-class engineer's certificate," or one of the higher rank.

3. Every foreign-going steam-ship of *less* than 100 nominal horse-power must have, as its only or first engineer, an engineer possessing a "second-class engineer's certificate," or one of the higher rank.

4. Every sea-going "*home-trade passenger*" steam-ship must have as its only or first engineer, an engineer possessing a "second-class engineer's certificate," or one of the higher rank:—and

5. Every person who has been engaged to serve as first or second-class engineer in any steam-ship as aforesaid, and who goes to sea as such, without being, at the time, entitled to and possessed of his certificate as before required,—and every person who employs any one in any of these capacities in such a ship, without ascertaining that he is, at the time, entitled to and possessed of his required certificate,—incurs, for each offence, a penalty not exceeding £50.[2]

The Board of Trade causes to be held, from time to time examinations of persons desirous of obtaining *certificates of competency* as engineers; and, for this purpose, can appoint and remove examiners, and prescribe rules as to the qualification of applicants, and the times and places of examination, and, generally, can do all acts proper for carrying into effect such examinations.[3] Applicants must pay the fees directed by the Board

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[1] Sec. 355. [2] 25 and 26 Vict., cap. 63, sec. 5. [3] Sec. 6.

of Trade, not exceeding £2 for a first-class, and £1 for a second-class engineer's certificate;[1] and to each applicant, duly reported to have satisfactorily passed the examination, and given satisfactory evidence of his sobriety, experience, and ability, the Board delivers a certificate of competency as first-class or second-class engineer.[2]

Certificates of service, differing in form from certificates of competency, are granted for engineers as follows:—

1. Every person who, before 1st April 1862, has served as first engineer in a foreign-going steam-ship of 100 nominal horse-power or upwards, or who has attained or attains the rank of engineer in Her Majesty's service, or the East India Company's service, is entitled to a "first-class engineer's certificate" of service.

2. Every person who, before 1st April 1862, has served as second engineer in a foreign-going steam-ship of 100 nominal horse-power or upwards, or as first or only engineer in any other steam-ship, or who has attained or attains the rank of first-class assistant-engineer in Her Majesty's service, is entitled to a "second-class engineer's certificate" of service.

Each of these certificates of service contains the name, place, and time of birth, and the length and nature of the previous service of the person to whom it is delivered; and these certificates of service the Board of Trade delivers to the several persons who are so entitled thereto, and who have proved themselves to have attained the rank or to have served as aforesaid, and on their giving a full and satisfactory account of the foresaid particulars.[3]

To these engineers' certificates of both kinds, section 20 applies the following provisions of the Merchant Shipping Act, as to the certificates of competency or service of masters and mates, viz.,—section 138, appointing all certificates, and all orders for the cancelling, suspending, altering, or otherwise affecting any certificate, to be recorded by the Registrar, —section 139, as to obtaining a copy of a certificate, which, without fault of the holder, he has lost or has been deprived of,—section 140, which imposes punishment for making false statements—for obtaining, for forging or altering, or fraudulently using or lending, any engineer's certificate,—section 161, prescribing rules as to production of agreements and certificates of masters and mates in foreign-going ships,—section 162, doing the same for home-trade ships.[4]

The power given by section 241 of the Merchant Shipping Act, to the Board of Trade or to any Local Marine Board, of making inquiries into the conduct of any master or mate, whom it has reason to believe to be unfit, from his incompetency or misconduct, to discharge his duties, is extended to any certified engineer, unfit, from incompetency or misconduct, to discharge his duties, as if the words "certified engineer" had been inserted after the word "master" is used in said section.[5] Likewise, in a ship required to have a certified engineer, the declaration of the engineer-surveyor must state, in addition to the statements required by section 309 of the Merchant Shipping Act, that the certificate or certificates of the engineer or engineers is or are such as, and in the condition as, required by the Act.[6]

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[1] Sec. 7. [2] Sec. 8. [3] Sec. 9. [4] Sec. 10. [5] Sec. 11. [6] Sec. 12.

Provision is now made for holding examinations and granting certificates in British possessions (32 Vict., cap. 11, sec. 8).

V.—THE APPOINTMENT AND DUTIES OF MASTER.

The term "master" in the Merchant Shipping Act includes every person (except pilots) having the command or charge of any ship. The master may, or may not, be owner or a part-owner,—and no formal writing is required on his appointment, further than a statement of his name in the statutory declarations by the owners previous to registry, and the insertion of that name by the registrar in the certificate of registry granted by the registrar, or in the provisional certificate granted by any British consular officer, in the event of the ship becoming the property of persons qualified to be owners of British ships at any foreign port.

When the master of a British registered ship is changed,—if this change is made in consequence of the sentence of any Naval Court, the presiding officer of that court,—or, if the change takes place from any other cause, the registrar,—or, if there is no registrar, the British consular officer resident at the port where the change takes place, must endorse on the certificate of registry a memorandum of the change, and subscribe his name to that endorsement, and forthwith report the change of master to the Registrar-General of Seamen in London. The officer of customs at any port in Her Majesty's dominions can refuse to admit any person to do any act at such port, as master of any British ship, unless his name be inserted in, or endorsed upon, the certificate of registry, as the last-appointed master thereof.[1]

The name of the master being thus inserted in, or duly endorsed on, the certificate of registry, and he being in possession of that certificate for the navigation of the ship, and of the ship herself with the consent of the owners, he is fully authorised to perform all the duties, and exercise all the powers, and is liable in all the responsibilities, which, by law, a master can do, or to which he is liable. It has been said that a master may delegate his powers and authority during the voyage,—that is, give his place to another, with the corresponding powers, authorities, and responsibilities; but there is no authority for this, and it is adverse to the spirit of the Merchant Shipping Act, and to the maritime law, unless, in the case of a justifiable necessity, which calls for such an appointment.

The certificate of registry is intrusted to the custody and charge of the master, and must be used only for the lawful navigation of the ship; and it is not liable to be withheld, by reason of any title, lien, charge, or interest whatsoever, which any owner, mortgagee, or other person may have, or claim to have, on or in the ship described in that certificate. If any person whatever, *whether interested or not in the ship*, refuses, on request, to deliver up such certificate, when in his possession or under his control, to the person for the time being entitled to the custody thereof, for the purposes of the lawful navigation of the ship, or to any registrar, officer of the customs, or other person legally entitled to require such delivery,—any justice, by warrants under his hand and seal, or any court capable of taking cognisance of such matter, can cause the person

[1] 17 and 18 Vict., cap. 104, sec. 46.

so refusing to appear before him and be examined touching such refusal. Unless it is proved to the satisfaction of the justice or court that there was reasonable cause for such refusal, the offender incurs a penalty not exceeding £100; but if it is made to appear to the justice or court that the certificate is lost, the party complained of must be discharged, and thereupon the justice or court certifies that the certificate of registry is lost.[1]

In any proceedings under this section of the Merchant Shipping Act, it will be well to keep in view two cases which occurred under corresponding sections of two previous Registry Acts. In one case, under section 18 of 34 Geo. III., cap. 68, which was an enactment similar in effect to the above, though different in phraseology,—it was held that it did not authorise the conviction of a master, who did not comply with the requisition of the sole owner to deliver the certificate of registry to him, though expressed to be for the purpose of having the necessary endorsements made at the custom-house, upon the transfer of the ship to him:[2] and under the corresponding enactment in section 41 of the Registry Act, 4 Geo. IV., it was held, that a conviction for detaining the certificate was bad, unless it stated that the person who demanded it was the proper officer of the customs, and the purpose for which the certificate was required by him.[3] And under said section 59, it has been held that a pledge of the certificate of registry by the master and sole owner was illegal and void, though made for a good and sufficient consideration.[4] But, in another case, the principal owner and ship's husband having required the master and also part-owner to deliver up the certificate, when the ship was in her port of discharge, but not discharged, which the master refused to do,—the uncommunicated intention of the former being to dismiss the master and appoint another:—it was held that for so refusing the master was not liable to a penalty.[5]

As the master can be appointed by a majority of the owners, so he may, at any time, be dismissed by the majority, without cause assigned, leaving him to his claim of damages against the owners, if he is improperly dismissed. After the voyage is terminated, a master may be discharged, without the owners being liable to him in damages; but if, during the course of a voyage, a master be unduly or wrongfully dismissed, he will, no doubt, be entitled to damages. Even though the master be also part-owner, the owners of the greater number of shares have power to dispossess him, on reasonable and justifiable cause, as being irregular in his accounts with his owners.[6]

The Merchant Shipping Act enacts, that if, during the progress of a voyage, the master is superseded, or, for any other reason, quits the ship, and is succeeded in command by some other person, he must deliver to his successor the various documents relating to the navigation of the ship and to the crew thereof which are in his custody, and, in default, he incurs a penalty not exceeding £20; and, immediately on assuming the command, the successor must enter in the official log a list of the documents as delivered to him.[7]

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[1] Sec. 50.
[2] The King *v.* Pixley, 10 East, 91.
[3] The King *v.* Walsh, 1 Ad. and E. 484.
[4] Wiley *v.* Crawford, 2 Jur. *n. s.* 943.
[5] Arkle *v.* Henzells, 4 Jur. *n. s.* 306.
[6] 4 Rob. A. R. 287.
[7] Sec. 259.

So far as the case permits, every master has the same rights, liens, and remedies for the recovery of his wages, which, by the Merchant Shipping Act, or by any law or custom, any seaman, not being a master, has for the recovery of his wages; and if, in any proceedings in any court of Admiralty or Vice-Admiralty, relating to the claim of a master to wages, any set-off or counter-claim is set up, it is lawful for the court to enter into and adjudicate upon all questions, and to settle all accounts then arising or outstanding and unsettled between the parties to the proceeding, and direct payment of any balance which is found to be due.[1] It is reasonably to be inferred, from the first part of this enactment, that the same causes which work a forfeiture of a seaman's wages, will also work the like forfeiture of a master's wages; and, should a master be dismissed for drunkenness, and he be reinstated on condition of his having no spirits on board, but, in disregard of this, he is found to be frequently drunk during a voyage,—there can be little doubt that, by his so acting, he forfeits his wages.

The first and paramount duty of a master is towards himself, his crew, and others who may be about to embark in his ship on the intended voyage,—to see that that ship is in every way seaworthy and fitted for the risks she is likely to encounter. This duty is imposed upon the captain before he starts upon the voyage. He must take care that his ship is duly marked with the necessary deck and load lines, in pursuance of the provisions of the Merchant Shipping Act, 1876. With certain unimportant exceptions, every British ship must be permanently and conspicuously marked with lines of not less than twelve inches in length and one inch in breadth, painted longitudinally on each side amidships, or as near thereto as is practicable, and indicating the position of each deck which is above water. The upper edge of each of these lines must be level with the upper side of the deck-plank next the waterway at the place of marking; the lines themselves being white or yellow on a dark ground, or black on a light ground (sec. 25). And the owner must, before entering the ship outwards from any port in the United Kingdom upon any voyage for which he is required so to enter her, or, if that is not practicable, as soon after as may be—(1.) Mark upon each of her sides amidships, or as near thereto as is practicable, in white or yellow on a dark ground, or in black on a light ground, a circular disc twelve inches in diameter, with a horizontal line eighteen inches in length drawn through its centre: (2.) The centre of the disc must indicate the maximum load-line in salt water to which the owner intends to load the ship for that voyage: (3.) He must also, upon so entering her, insert in the form of entry delivered to the collector or other principal officer of customs, a statement in writing of the distance in feet and inches between the centre of this disc and the upper edge of each of the lines indicating the position of the ship's decks which is above that centre; and if default is made in delivering this statement in the case of any ship, any officer of customs may refuse to enter the ship outwards: (4.) The master of the ship must enter a copy of this statement in the agreement with the crew before it is signed by any member of the crew, and no superintendent of any Mercantile Marine Office may proceed with the engagement of the crew until this entry is

[1] Sec. 191.

made: (5.) The master of the ship must also enter a copy of this statement in the official log-book: and (6.) When a ship has been marked as hereby required, she must be kept so marked until her next return to a port of discharge in the United Kingdom (sec. 26).

With respect to the marking of a load-line on a British ship employed in the coasting trade, the following rules must be observed:—(1.) The owner must, before proceeding to sea from any port, mark upon each of her sides amidships, or as near thereto as is practicable, in white or yellow on a dark ground, or in black on a light ground, a circular disc twelve inches in diameter, with a horizontal line eighteen inches in length drawn through its centre: (2.) The centre of this disc must indicate the maximum load-line in salt water to which the owner intends to load the ship until notice is given of an alteration: (3.) He must also once in every twelve months, immediately before the ship proceeds to sea, send or deliver to the collector or other principal officer of customs of the port of registry of the ship, a statement in writing of the distance in feet and inches between the centre of the disc and the upper edge of each of the lines indicating the position of the ship's decks which is above that centre: (4.) The owner, before the ship proceeds to sea after any renewal or alteration of the disc, must send or deliver to the collector or other principal officer of customs of the port of registry of the ship, notice in writing of such renewal or alteration, together with such statement in writing, as before mentioned, of the distance between the centre of the disc and the upper edge of each of the deck-lines; and if default is made in sending or delivering any notice or statement hereby required to be sent or delivered, the owner is liable to a penalty not exceeding £100: (5.) When a ship has been marked as hereby required, she must be kept so marked until notice is given of an alteration (sec. 27); and if any owner or master of a British ship neglects to cause his ship to be marked as hereby required, or to keep her so marked, or allows the ship to be so loaded as to submerge in salt water the centre of the disc, or if any person conceals, removes, alters, defaces, or obliterates, or suffers any person under his control to conceal, remove, alter, deface, or obliterate, any of the said marks, except in the event of the particulars thereby denoted being lawfully altered, or except for the purpose of escaping capture by an enemy, such owner, master, or person for each offence incurs a penalty not exceeding £100. And if any of the marks is in any respect inaccurate, so as to be likely to mislead, the owner of the ship incurs a penalty not exceeding £100 (sec. 28).

The Board of Trade may, in any case or class of cases in which they think it expedient so to do, direct any person appointed by them for the purpose to record, in such manner and with such particulars as the Board of Trade direct, the draught of water of any sea-going ship, as shown on the scale of feet on her stem and on her stern post, upon her leaving any dock, wharf, port, or harbour for the purpose of proceeding to sea; and such person must thereupon keep such record, and from time to time forward the same, or a copy thereof, to the Board of Trade; and such record, or any copy thereof, if produced by or out of the custody of the Board of Trade, is admissible in evidence of the draught of water of the ship at the time specified in the record. The master of every British sea-going ship must, upon her leaving any dock, wharf, port, or harbour for the

purpose of proceeding to sea, record her draught of water in the official log-book (if any), and produce such record to any principal officer of customs whenever required by him so to do, or, in default of such production, he incurs a penalty not exceeding £20 (Merchant Shipping Act, 1871, 34 and 35 Vict., cap. 110, sec. 5). The record of the draught of water must specify the extent of her clear side in feet and inches. The term "clear side" means the height from the water to the upper side of the plank of the deck from which the depth of hold, as stated in the register, is measured, and the measurement of the clear side is to be taken at the lowest part of the side.

Every master of a sea-going ship must, upon the request of any person appointed to record the ship's draught of water, permit such person to enter the ship, and to make such inspections, and take such measurements, as may be requisite for the purpose of such record; and any master who fails so to do, or impedes, or suffers any one under his control to impede, any person so appointed in the execution of his duty, for each offence incurs a penalty not exceeding £5 (Merchant Shipping Act, 1873, 36 and 37 Vict., cap. 85, sec. 4).

In addition to attending to the marking of a deck and load line, the captain must be careful, for the sake of himself, his crew, and others about to embark on the voyage, that all statutory directions as to the stowage of cargo have been observed. No cargo of which more than one-third consists of any kind of grain, corn, rice, paddy, pulse, seeds, nuts, or nut-kernels, must be carried on board any British ship, unless it be contained in bags, sacks, or barrels, or secured from shifting by boards, bulkheads, or otherwise; and if the managing owner or master of any British ship, or any agent of such owner, who is charged with the loading of the ship or the sending her to sea, knowingly allows any such cargo, or part of such cargo, to be shipped therein for carriage contrary to the provisions of this section, he incurs a penalty not exceeding £300, to be recovered upon summary conviction (Merchant Shipping Act, 1876, 39 and 40 Vict., cap. 80, sec. 22). Again, if any part of the cargo consist of timber, the master and owner must take care that the regulations contained in the 24th section of the Act of 1876 are attended to. By that section it is provided, that after the 1st of November 1876, if a ship, *British or foreign*, arrives between the last day of October and the 16th day of April in any year at any port in the United Kingdom, from any port out of the United Kingdom, carrying as deck cargo,—that is to say, in any uncovered space upon deck, or in any covered space not included in the cubical contents forming the ship's registered tonnage,—any wood goods coming within the following descriptions;—that is to say, (*a*) Any square, round, waney, or other timber, or any pitch pine, mahogany, oak, teak, or other heavy wood goods whatever; or (*b*) Any more than five spare spars or store spars, whether or not made, dressed, and finally prepared for use; or (*c*) Any deals, battens, or other light wood goods of any description,—to a height exceeding three feet above the deck; the master of the ship, and also the owner, if he is privy to the offence, shall be liable to a penalty not exceeding £5 for every hundred cubic feet of wood goods carried in contravention of this section; and such penalty may be recovered by action or on indictment, or to an amount not exceeding £100 (whatever may be the maximum penalty recoverable), on summary conviction. But

a master or owner is not liable to any penalty—(1.) In respect of any wood goods which the master has considered it necessary to place or keep on deck during the voyage on account of the springing of any leak, or of any other damage to the ship received or apprehended: or (2.) If he proves that the ship sailed from the port at which the wood goods were loaded as deck cargo at such time before the last day of October as allowed a sufficient interval, according to the ordinary duration of the voyage, for the ship to arrive before that day at the said port in the United Kingdom, but was prevented from so arriving by stress of weather or circumstances beyond his control: or (3.) If he proves that the ship sailed from the port at which the wood goods were loaded as deck cargo at such time before the 16th day of April as allowed a reasonable interval, according to the ordinary duration of the voyage, for the ship to arrive after that day at the said port in the United Kingdom, and by reason of an exceptionally favourable voyage arrived before that day. And the section does not affect any ship, not bound to any port in the United Kingdom, which comes into any port of the United Kingdom under stress of weather, or for repairs, or for any other purpose than the delivery of her cargo.

The importance of a strict attention to everything which may affect the seaworthiness of the ship, is made evident by the fact that the Board of Trade have ample power to detain a ship which may be suspected of being in an unfit state to proceed on her voyage. Thus by section 6 of the Merchant Shipping Act, 1876, it is provided, that where a British ship, being in any port of the United Kingdom, is, by reason of the defective condition of her hull, equipments, or machinery, or by reason of overloading or improper loading, unfit to proceed to sea without serious danger to human life, having regard to the nature of the service for which she is intended, any such ship (hereinafter referred to as "unsafe") may be provisionally detained for the purpose of being surveyed, and either finally detained or released, as follows:—(1.) The Board of Trade, if they have reason to believe, on complaint or otherwise, that a British ship is unsafe, may provisionally order the detention of the ship for the purpose of being surveyed. (2.) When a ship has been provisionally detained there is to be forthwith served on the master of the ship a written statement of the grounds of her detention, and the Board of Trade may, if they think fit, appoint some competent person or persons to survey the ship and report thereon to the Board. (3.) The Board of Trade, on receiving the report, may either order the ship to be released, or, if in their opinion the ship is unsafe, may order her to be finally detained, either absolutely, or until the performance of such conditions with respect to the execution of repairs or alterations, or the unloading or reloading of cargo, as the Board think necessary for the protection of human life, and may from time to time vary or add to any such order. (4.) Before the order for final detention is made, a copy of the report is to be served upon the master of the ship, and within seven days after such service the owner or master of the ship may appeal to the court of survey for the port or district where the ship is detained. (5.) Where a ship has been provisionally detained, the owner or master of the ship, at any time before the person appointed under this section to survey the ship makes such survey, may require that he shall be accompanied by such person

as the owner or master may select out of the list of assessors for the court of survey; and in such case, if the surveyor and assessor agree, the Board of Trade will cause the ship to be detained or released accordingly; but if they differ, the Board of Trade may act as if the requisition had not been made, and the owner and master then have the like appeal touching the report of the surveyor as before mentioned. (6.) Where a ship has been provisionally detained, the Board of Trade may at any time, if they think it expedient, refer the matter to the court of survey for the port or district where the ship is detained. (7.) The Board of Trade may at any time, if satisfied that a ship detained under this Act is not unsafe, order her to be released, either upon or without any conditions. (8.) For the better execution of this section, the Board of Trade, with the consent of the Treasury, may from time to time appoint a sufficient number of fit officers, and may remove any of them. (9.) Any officer so appointed has the same power as the Board of Trade of provisionally ordering the detention of a ship for the purpose of being surveyed, and of appointing a person or persons to survey her; and if he thinks that a ship so detained by him is not unsafe, may order her to be released. And (10.) A detaining officer must forthwith report to the Board of Trade any order made by him for the detention or release of a ship.

The constitution, powers, and procedure of the court of survey, referred to in the last-mentioned section of the Act of 1876, are governed by sections 7, 8, and 9 of that Act. Section 8 contains an express provision that at any inspection or survey held under the Act, the owner and master of the ship, and any person appointed by the owner or master, may attend. By section 12, full provision is made for granting all necessary authority and powers to persons who may have to make surveys or inspections under the Act; and it is provided that any person who wilfully impedes an inspector in the performance of his duties, or disobeys any of his orders, shall incur the penalties mentioned in section 16 of the principal Act.

If it appears that there was not reasonable and probable cause, by reason of the condition of the ship or the act or default of the owner, for the provisional detention of the ship, the Board of Trade is liable to pay to the owner of the ship his costs of, and incidental to, the detention and survey of the ship, and also compensation for any loss or damage sustained by him by reason of the detention or survey; and if, on the other hand, a ship is finally detained under the Act, or if it appears that a ship provisionally detained was, at the time of such detention, unsafe within the meaning of the Act, the owner of the ship is liable to pay to the Board of Trade their costs of, and incidental to, the detention and survey of the ship (sec. 10).

If the Board of Trade have been put in motion by a complainant, and have become liable to pay any costs or compensation as aforesaid, they may recover the amount from such complainant, and they may, before entering into the inquiry at all, require a complainant to find security for the probable amount of such costs and compensation. But where the complaint is made by one-fourth, being not less than three, of the seamen belonging to the ship, and is not, in the opinion of the Board or officer, frivolous or vexatious, such security is not to be required, and the Board or officer must, if the complaint is made in sufficient time before the sailing

of the ship, take proper steps for ascertaining whether the ship ought to be detained (sec. 11).

Subject to certain conditions as to the service of the detaining order upon a consular officer of the state to which she belongs, the provisions of the Act of 1876 with respect to the detention of ships apply to a foreign ship which has taken on board all or any part of her cargo at a port in the United Kingdom, and which is, whilst at that port, unsafe by reason of overloading or improper loading (sec. 13).

Where, under any of the Merchant Shipping Acts, a ship is authorised or ordered to be detained, any commissioned officer on full pay in the naval or military service of Her Majesty, or any officer of the Board of Trade or customs, or any British consular officer, may detain the ship; and if the ship after such detention, or after service on the master of any notice of or order for such detention, proceeds to sea before it is released by competent authority, the master of the ship, and also the owner, and any person who sends the ship to sea, if such owner or person be party or privy to the offence, will forfeit and must pay to Her Majesty a penalty not exceeding £100.

Where a ship so proceeding to sea takes to sea, when on board thereof in the execution of his duty, any officer authorised to detain the ship, or any surveyor or officer of the Board of Trade or customs, the owner and master of the ship are each liable to pay all expenses of, and incidental to, the officer or surveyor being so taken to sea, and also a penalty not exceeding £100; or, if the offence is not prosecuted in a summary manner, not exceeding £10 for every day until the officer or surveyor returns, or until such time as would enable him, after leaving the ship, to return to the port from which he is taken, and such expenses may be recovered in like manner as the penalty (sec. 34).

Where any order, notice, statement, or document requires, for the purpose of any of these provisions, to be served on the master of a ship, the same must be served, where there is no master, and the ship is in the United Kingdom, on the managing owner of the ship, or if there is no managing owner, on some agent of the owner residing in the United Kingdom, or where no such agent is known or can be found, by affixing a copy thereof to the mast of the ship. Any such order, notice, statement, or document may be served by delivering a copy thereof personally to the person to be served, or by leaving the same at his last place of abode, or, in the case of a master, by leaving it for him on board the ship with the person being, or appearing to be, in command or charge of such ship. Any person who obstructs the service of any order, notice, statement, or document on the master of a ship, incurs a penalty not exceeding £10, and if the owner or master of the ship is party or privy to such obstruction, he is guilty of a misdemeanour (sec. 35).

And, finally, with reference to the duty towards the persons who may be about to embark on the intended voyage, the captain, as well as the owner, and every one who may be concerned in sending the ship to sea, must remember that every person who sends or attempts to send, or is party to sending or attempting to send, a British ship to sea in such unseaworthy state that the life of any person is likely to be thereby endangered, is guilty of a misdemeanour, unless he proves that he used all reasonable means to ensure her being sent to sea in a seaworthy state, or that her

going to sea in such unseaworthy state was, under the circumstances, reasonable and justifiable, for which purpose he may give evidence in the same manner as any other witness. And every master of a British ship who knowingly takes the same to sea in such unseaworthy state that the life of any person is likely to be thereby endangered, is guilty of a misdemeanour, unless he proves that her going to sea in such unseaworthy state was, under the circumstances, reasonable and justifiable, for which purpose he may give evidence in the same manner as any other witness (39 and 40 Vict., cap. 80, sec. 4). The prosecution cannot be instituted except by or with the consent of the Board of Trade, or of the Governor of the British possession in which such prosecution takes place.

In regard to the duties of the master in reference to his owners, as his situation is one of great and almost unbounded trust, and as the law vests him with very extensive powers and authority, the utmost fidelity, attention, and vigilance are required from him, both for the sake of himself, his cargo and crew, and his owners,—as, should an injury or loss or damage happen by reason of his carelessness, negligence, or misconduct, he will be personally responsible. He is bound to exercise due skill and care in the management of the ship, and of the cargo committed to his charge; and he must devote his whole time and attention to the service of his employers. And, therefore, he is not at liberty to lend out his services, or a part of them, to another, or to enter into any engagement for his own benefit, which may have the effect of distracting his attention or withdrawing his time from the superintendence of his owner's concerns; and, should he do so, the profits thence arising would, no doubt, belong to his owners.

The master is bound, during the whole course of a voyage, whether at sea, at anchor, or in port, to be watchful and attentive to the situation and position of his ship, so as to avoid dangers and collisions; and he must not sail nor proceed in a fog, as even having a licensed pilot on board will not protect him or his owners from liability for damages arising in such a case.

The Merchant Shipping Act enacts, that any master of any British ship who, by wilful breach of duty, or by neglect of duty, or by reason of drunkenness, does any act tending to the immediate loss, destruction, or damage of his ship, or tending immediately to endanger the life or limb of any person belonging to or on board of the same,—or who, by wilful breach of duty, or by neglect of duty, or by reason of drunkenness, refuses or omits to do any lawful act proper and requisite to be done by him for preserving such ship from immediate loss, destruction, or damage, or for preserving any person belonging to or on board of the same from immediate danger to life or limb,—he, for every such offence, is held to be guilty of a misdemeanour.[1]

If any complaint is made to the Board of Trade, from which that Board has reason to believe that any master or mate is, from incompetency or misconduct, unfit (*i.e.*, unqualified or disqualified) to discharge his duties,—the Board can, if it thinks fit so to do, direct an investigation; and this investigation is conducted, and the results thereof reported to the Board of Trade, in the same manner as formal investigations into wrecks

[1] Sec. 239.

and casualties are directed to be conducted, and the results to be reported, under Part VIII. of the Merchant Shipping Act.[1]

The Local Marine Board, Magistrate, Naval Court, Admiralty Court, or other court or tribunal by which the case is investigated or tried, can suspend or cancel the certificate,—either of competency or service,—of any master or mate, in the cases mentioned previously (p. 50).

And every master or mate whose certificate is so cancelled or suspended must deliver it, on demand, to the Board, &c., by which the case is investigated or tried; and, if not so demanded, then, on demand, to the Board of Trade, or as it directs, under a penalty not exceeding £50. But to the person whose certificate has been cancelled, the Board of Trade may, at any after-time, grant a new certificate of the same or of any lower rank.[2]

It is the imperative duty of the master, at all times and on all occasions, honestly and faithfully to communicate immediately to his owners all matters, however apparently trifling, and any accident or damage, that happens to the ship, and any occurrences that may lead to a suspicion or doubt of her having sustained some damage,—as, without this knowledge, the owners, both of ship and cargo, cannot communicate the circumstances to the underwriters, and, by not doing so, may run a risk of losing their insurances. Take the following case, as an example of the serious consequences that may arise from the master's thoughtless silence, or his heedless delay, in noticing any such accidents, or suspicions of an accident:—On 25th October the owners effected an insurance on their ship at and from her port of loading abroad to her port of discharge;—it appeared that, *on the 25th July preceding*, the ship, whilst in her port of loading, was driven on a rock by a storm, but was got off without having apparently suffered any material damage; and afterwards the master wrote a letter to his owners, without communicating this accident,—which letter they received on 5th October. The ship arrived at her port of discharge, when the master made a protest,—detailing the accident, and stating that the planks of her bottom must have been chafed, and her bottom otherwise injured by striking on the rock;—but, in an action by the owners against the underwriters, it was held that the former could not recover as for an *average or partial loss* from the accident, as the master was bound to communicate that accident, and, for want of this communication, the damage formed an implied exception out of the policy, and that the policy not being made void, the owners could not recover back the premium.[3]

These were the consequences, in this case, of the master's neglect or carelessness; and the like consequences will, unquestionably, arise from similar neglects and carelessness on the part of the master; and, for such like accidents or suspicions, no entry appears in the official log-book, which, by the Merchant Shipping Act, the masters of ships of different classes are bound to keep.

The Board of Trade sanctions forms of official log-books, which may be different for different classes of ships, so that each form contains blanks

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[1] Sec. 241.
[2] 17 and 18 Vict., cap. 104, sec. 242; 25 and 26 Vict., cap. 63, secs. 23, 24.
[3] Gladstone *v.* King, M. and S. 35.

for the entries after mentioned; and an official log of every ship (except ships employed exclusively in trading between ports on the coasts of the United Kingdom) must be kept in the appropriate sanctioned form,—which official log can, at the discretion of the master or owner, either be kept distinct from the ordinary log of the ship, or united therewith,—so that, in all cases, all the blanks in the official log be duly filled up.[1] Every entry in this official log must be made as soon as possible after the occurrence to which it relates; and if not made on the same day as the occurrence, must be made and dated so as to show the date of the occurrence and of the entry respecting it; and, in no case, must any entry therein, in respect of any occurrence happening previously to the arrival of the ship at her first port of discharge, be made more than twenty-four hours after that arrival.[2]

Every master of a ship, for which an official log-book is required by the Act, must make or cause to be made therein entries of the following matters:—

1. Every legal conviction of any member of his crew, and the punishment inflicted.

2. Every offence committed by any member of his crew, for which it is intended to prosecute, or to enforce a forfeiture, or to exact a fine, together with such statement concerning the reading over such entry, and concerning the reply (if any) made to the charge, as required by section 244.

3. Every offence for which punishment is inflicted on board, and the punishment inflicted.

4. A statement of the conduct, character, and qualifications of each of his crew, or a statement that he declines giving an opinion on such particulars.

5. Every case of illness or injury happening to any member of the crew, with the nature thereof, and the medical treatment adopted, if any.

6. Every marriage taking place on board, with the names and ages of the parties.

7. The names of every seaman or apprentice who ceases to be a member of the crew, otherwise than by death, with the place, time, manner, and cause thereof.

8. The amount of wages due to any seaman who enters Her Majesty's service during the voyage.

9. The wages due to any seaman or apprentice who dies during the voyage, and the gross amount of all deductions to be made therefrom.

10. The sale of the effects of any seaman or apprentice who dies during the voyage, including a statement of each article sold, and of the sum received for it.

11. Every collision with any other ship, and the circumstances under which the same has occurred.[3]

12. A copy of the load-line statement, made by the owner under section 26 of 39 and 40 Vict., cap. 30, on entering the ship outward to a foreign port.

These entries in the official log-book must be signed as follows,—viz., every such entry must be signed by the master and by the mate, or some other of the crew; every entry of illness, injury, or death, must be also

[1] Sec. 280. [2] Sec. 281. [3] Sec. 282.

signed by the surgeon or medical practitioner, if any;—and every entry of wages due to any seaman who enters Her Majesty's service must be signed by the master and by the seaman, or by the officer authorised to receive the seaman into that service.[1]

The following offences, in respect of official log-books, are punishable as after mentioned:—

1. If in any case an official log-book is not kept in the manner required by the Act, or if any entry directed by the Act to be made in the log-book is not made at the time and in the manner so directed, the master, for each offence, incurs the specific penalty mentioned in the Act in respect thereof, or, where there is no specific penalty, a penalty not exceeding £5.

2. Every person who makes or procures to be made, or assists in making, any entry in an official log book, in respect of any occurrence happening previously to the arrival of the ship at her final port of discharge, more than twenty-four hours after such arrival,—he, for each such offence, incurs a penalty not exceeding £30.

3. Every person who wilfully destroys, or mutilates, or renders illegible, any entry in an official log-book,—or who wilfully makes, or procures to be made, or assists in making, any false or fraudulent entry or omission in such log-book,—for each such offence, he is deemed guilty of a misdemeanour.[2] And all entries made in any official log-book, as before directed, are to be received in evidence in any proceedings in a court of justice, subject to all just exceptions.[3]

In the case of foreign-going ships, the captain must, within forty-eight hours after the ship's arrival at her final port of destination in the United Kingdom, or upon the discharge of the crew (whichever first happens), deliver to the superintendent before whom the crew is discharged the official log-book of the voyage; and the captain or owner of every home-trade ship,—not exclusively employed in trading between ports on the coasts of the United Kingdom,—must, within twenty-one days after the 30th June and 31st December in every year, transmit or deliver to some superintendent in the United Kingdom the official log-book for the preceding half-year. Every captain or owner who refuses or neglects to deliver his official log-book, as required by the Act, is subject to the same consequences and liabilities to which he is made subject for the non-delivery of the list of his crew, as after mentioned.[4]

If any ship ceases, by reason of transfer of ownership or change of employment, to fall within the definition of a foreign-going or of a home-trade ship,—if the ship is then in the United Kingdom, the captain or owner must, within one month, and, if she is elsewhere, within six months, deliver or transmit to the superintendent at the port to which the ship belonged the official log-book (if any), duly made out to the time at which she ceased to be a foreign-going or home-trade ship, and, in default, he, for each offence, incurs a penalty not exceeding £10; and if any ship is lost or abandoned, the captain or owner must, if practicable, and as soon as possible, deliver or transmit to the superintendent at the port to which the ship belonged the official log-book (if any), duly made out to the time of such loss or abandonment, and, in default, he, for each offence, incurs a penalty not exceeding £10.[5]

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[1] Sec. 283. [2] Sec. 284. [3] Sec. 285. [4] Sec. 286. [5] Sec. 287.

The duties of the master, in the event of any death or birth happening on board his ship during the voyage, are defined by the Births and Deaths Registration Act, 1874, 37 and 38 Vict., cap. 88. By section 54 of that Act, the captain is to record in his log-book or otherwise, as soon as may be after the happening of the event, the fact of any birth or death on board his ship, with the particulars required by the 4th Schedule to the Act; and upon arrival of his ship at any port in the United Kingdom, or at such other time or place as the Board of Trade may from time to time direct, he is to deliver a return of the facts so recorded to the Registrar-General of Shipping and Seamen. When the Board of Trade directs the return to be made elsewhere than in the United Kingdom, they may direct that it be delivered to the shipping master or collector of customs, if the port be in Her Majesty's dominions, or to the principal consular officer, if it be a foreign port. Every captain failing to comply with these provisions incurs a penalty not exceeding £5 for each offence.

The duties of the captain to shippers, regard both the condition of the ship,—the loading of the cargo,—the conduct of the voyage,—and the delivery of the cargo.

It is a principal duty of the captain to make himself sure, *before sailing*, that his ship "is tight, stanch, and strong, and every way fitted for the voyage," and that she is furnished with all the sails, ropes, tackling, and apparatus requisite, and with the proper complement of crew, for that voyage. He must, therefore, be careful that no disrepair, want, or deficiency exists in the ship,—that the pumps are in proper working order,—that the ship has her full complement of anchors, cables, and sails,—and that the standing and running rigging are complete, and in good working order. If there is any disrepair, want, or deficiency,—however small it may seem,—or if any part of the appurtenances or apparelling is wanting, deficient, or unserviceable, the ship may be held unseaworthy, and, besides losing the insurance, the captain and owners may be liable in damages to the shippers. As, for instance, where the vessel had decayed iron fastenings, and no knees to support her lower decks. either fore or aft, and was in a loose state throughout;[1] where the mainhold beams, which had been cut and lengthened, were not supported and strengthened by knees, and her old anchors, sails, and rigging were insufficient;[2] where the main-top gallant sails and studding-sails used in light weather were extremely rotten, and almost unserviceable, although the other sails used in stormy weather were good;[3]—where the lower-deck beams and knees were decayed and sprung,—the bowsprit was sprung and the stern wrought loose, and the ironwork in general very much decayed and wrought loose;[4]—and where the cable of the small bower anchor was so worn and decayed as to be unfit for service, and the best bower anchor was too light and short in the shank for a vessel of the tonnage;[5]—in these cases, the ship was held to be unseaworthy. And when a ship was so heavily or improperly loaded when she sailed as to be incapable of encountering the voyage, this was held to be unseaworthiness.[6]

These cases were, no doubt, questions with the underwriters as to in-

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1 Parker *v.* Potts, 3 Dow, 27.
2 Watt *v.* Morris, 1 Dow, 32.
3 Wedderburn *v.* Bell, 1 Camp. 1.
4 Dougal *v.* Scougall, 4 Dow, 269.
5 Wilkie *v.* Geddes, 3 Dow, 57.
6 Weir *v.* Aberdein, 2 B. and A. 320.

surances; but the same principle of seaworthiness applies to questions with freighters or shippers of goods.

The ship must also be provided, at the time of sailing, with a crew of the competent number, sufficient, and adequate in skill and ability, for the navigation. As where a ship sailed from the Mauritius to London with her full complement of two mates and crew, but the master being very ill, was, next day, unable to take charge of the ship, and neither of the mates, nor any one on board, being competent to manage the voyage to England, the ship had to put back to get another officer, and was wrecked :—in an action against the underwriters, they were held not liable.[1] So, also, where a ship was insured at and from Portneuf to London, and was warranted to sail on or before the 28th October, and accordingly dropped down, on the 26th from Portneuf, with a crew *incomplete* for the voyage, and on the 28th reached Quebec, the nearest place where a clearance could be obtained, and there completed her crew, and on the 29th obtained clearance, and sailed next day, and was lost:—in an action upon a policy of insurance on freight and goods,—it was held, that the dropping down from Portneuf to Quebec, with an incomplete crew, on the 26th, was clearly not a beginning to sail on the voyage, but only a sailing preparatory to the voyage.[2] And where an insurance was effected on ship and goods for the homeward voyage, "at and from Cuba to Liverpool," without any liberty to touch and stay in the policy;—the ship's proper complement for such a voyage was ten men,—but the master having lost some of his outward crew by death and desertion, and being unable at Cuba to engage *ten* men for *Liverpool*, sailed with only *eight* men engaged for Liverpool, and *two* on a run to Montego Bay, Jamaica, at which place he touched, landed the two men, procured others, and proceeded on his voyage to Liverpool,—it was held, that the ship was not seaworthy *for a voyage to Liverpool* when she sailed from Cuba, as she ought to have had on board a full complement of men *engaged for the whole voyage*.[3]

These decisions regard the complement of the crew sufficient for the navigation of the ship during the entire voyage; and, in regard to the captain himself, it is essentially necessary that he possesses a reasonably competent skill to navigate the ship throughout the voyage. In an old insurance case, during the existence of the slave trade (Gregson *v.* Gilbert),[4] the ship had loaded a cargo of slaves on the coast of Guinea, and was bound to the island of Jamaica, but the master missed the island, and, from a want of water on board, a number of the slaves were thrown overboard:—this was held not to be a loss from perils of the sea. And where a ship was insured "from Cork to the ship's port or ports of loading on the coast of Spain, within the Straits of Gibraltar, *including Tarragona* (then in possession of the Allies), and not higher up the Mediterranean;" —it was the intention of the master to go into Tarragona, but being entirely ignorant of the coast, he passed that port in the night, and for it mistook Barcelona, then in possession of the French, and, when entering that port at night, the ship was captured :—it was held, that the underwriters were discharged in consequence of a master of sufficient skill not being on board.[5]

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[1] Clifford *v.* Hunter, 1 M. and M. 103. [2] Ridsdale *v.* Newnham, 3 M. and S. 456.
[3] Forshaw *v.* Chabert, 3 B. and B. 158. [4] 1 Park, 138. [5] Tait *v.* Levi, 14 East, 481.

It is the duty of the captain to have his ship properly ballasted, and to have the hold in a fit state for receiving the goods to be taken in, and also to superintend the loading of the cargo,—to take care that the goods are received in proper condition,—and that they are properly stowed.[1] Shippers of goods of a dangerous nature, as aquafortis, naphtha, matches, gunpowder or petroleum, are bound, under heavy penalties, to describe the nature of the contents on the outside of the packages, and they must give to the master a written notice of the description of the goods, and of the name and address of the sender. The master may refuse to take such goods on board; and when such goods have been sent on board without being marked, or without being accompanied by the necessary written notice, the master or owner may cause them to be thrown overboard, and by so doing he will incur no responsibility; and the shipper of such goods, who either omits to describe them or misdescribes them, incurs the further risk of a forfeiture of the goods by any court having Admiralty jurisdiction (Merchant Shipping Act, 1873, secs. 23–28).

The manner of taking the goods on board must depend upon the custom of the port of loading; but, in all cases, it is the duty of the captain to have proper ropes and tackling provided for taking the goods on board and lowering them into the hold;—for, if any part of the cargo be accidentally injured or damaged in taking on board, or letting down to the hold, the captain will be answerable. It is the special duty of the captain to take care that the ship is well and properly dunnaged, for the protection of the particular kind of cargo from leakage, according to the rules, express or implied, in the trade. The cargo must be well and properly stowed on board, and so arranged that the different articles of which it may be composed may not injure one another, and may not be injured by the rolling or leakage of the ship. Strictly speaking, the goods ought to be delivered to the captain himself, and his receipt obtained for them, until the bills of lading are signed; but it has been held that, according to the custom of the Port of London, a delivery to the mate was sufficient, although it may be doubted if a more general delivery to the crew would be sufficient.

When a receipt has been given, care should be taken not to deliver a bill of lading to any, unless to the holder of the receipt, who can give the receipt in exchange, otherwise the captain may incur a twofold responsibility,—one to the holder of the receipt, and another to the holder of the bill of lading. Having *once* signed bills of lading for the cargo or parts of the cargo already shipped, the captain must, on no account, sign bills of lading *a second time* for the same,—his authority to sign bills of lading being at an end when he has *once* signed these, as was held in the following case:—75 qrs. of wheat were shipped, and a bill of lading was signed for these, and pledged with a party who advanced money thereon: then 70 qrs. more were shipped, and a bill of lading was signed for these, and pledged in the same manner to the same party: and thereafter the captain was fraudulently induced to sign another bill of lading for the whole 145 qrs.;—but it was held, that when a captain has once signed bills of lading for a cargo on board his vessel, his power of signing bills of lading for that cargo is thereby at an end.[2] When goods have been duly taken on board,

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[1] Anglo-African Co. *v.* Lamzed, L. R 1 C. P. 226.
[2] Hubbersty *v.* Ward, 8 W. H. and G. 330.

and bills of lading for them signed, the owner of the goods is not entitled to have these goods re-delivered to him, without paying the freight that would become due for the carriage of them, and securing against the consequences of the bills of lading.[1] And the master ought not to receive on board more goods than (after allowing for the furniture and the proper working of the ship, and for the proper accommodation of the crew) the vessel can conveniently carry without being overladen; and he should be careful to allow no goods on board which are contraband, or which have not been duly cleared at the custom-house, as the ship and the legally shipped goods may be detained, or may become liable to forfeiture, in consequence of goods smuggled, contraband, or not duly cleared, being found on board.

When the ship is all ready for sea, and the ship and the goods have been duly cleared at the customs for the voyage, the captain must sail without delay as soon as the wind and weather permit, but so as not to sail in a strong gale or in stormy weather. In this country, the captain is the sole judge of the propriety of sailing; but he must use a due and reasonable time in commencing the voyage, and must sail with the first fair wind and opportunity after the completion of the loading; and so as to afford him knowledge of the terms of the charter-party and of the insurances, both on ship and goods. it is proper, besides the bills of lading and clearances, also to furnish him with copies of the charter-party, and of the different policies of insurance, both on ship and cargo.

The captain must regularly exhibit the lights, and use the fog-signals, in terms of the regulations hereafter specially detailed, and he is bound to conduct the voyage by the shortest, the safest, and the most direct course to the place of destination, without making any unnecessary delay, or stopping at any intermediate port or place, and without deviation from that course,—unless for a good and justifiable reason,—as to avoid enemies or pirates,—to repair damages from perils of the sea,—or to procure water or provisions, should the proper and usual supply of sea-stores be exhausted; and if, during a deviation, without justifiable cause, the goods on board be lost or damaged, or if thereby the ship do not arrive at her port of destination by the day fixed, or in due course, the captain or owners will be liable in damages.

If a particular route for the ship is laid down in the charter-party or in the policies of insurance, the captain must follow that route, and he must pursue the most direct course in following that route, to arrive at the port of destination. As where a ship was insured from Carron to Hull,—in which trade it was usual, in going down the Firth of Forth, to touch at various places, taking in or delivering goods,—but, here, the insurance was not "with liberty to call as usual," but only "with liberty to call at Leith;" the ship passed Leith without calling there, but put into Morrison's Haven, six miles farther down on the same side,—and, after getting safe again into the direct course of the voyage from Carron to Hull, she was overtaken by a storm at Holy Island, and wrecked, with the total loss of the cargo:—it was held, in the House of Lords, that this was a wilful deviation from the due course of the voyage insured, which is, in all cases, a determination of the risk,—that, from that moment, the engagement between the insurers

[1] Tindall *v.* Taylor, 4 E. and B. 219.

and the insured is at an end,—and that it is immaterial from what cause or at what place a subsequent loss arises, the insurers being in no case answerable for such.[1] And on a voyage from Liverpool to London, pearl ashes were insured, "warranted free of average under 5 per cent.;" previous to sailing, the master had taken in some goods at Liverpool for Southampton, intending first to put in there; from bad weather, the ship made much water during the first part of the voyage; and, after putting into Southampton and delivering the goods there, she proceeded to London, still making water; the ashes were damaged to the extent of 60 per cent.:—in an action on the policy, it was held that the ship sailed on the voyage insured, the master having an intention to deviate, which intention he afterwards executed, and that by the deviation the underwriters were discharged from the subsequent, but not from the previous loss.[2]

So also, if, in the charter-party or policy, several successive ports are named, the master must sail to these in the order in which they are specifically named, unless there be a general uniform usage to the contrary, or it appear, from the words used, that the geographical order in which these ports occur is not to be attended to, or that the purposes of the voyage cannot be confined to the order in which these are named. Thus, in a policy of insurance on a ship, "at and from Fisherrow to Gottenburg and back to Leith and Cockenzie," which latter port lies farther down the Firth of Forth, and nearer Gottenburg; without going first to Leith, the ship put into Cockenzie, and, in coming out of that harbour, she was stranded and lost:—it was held, that, as the ends or limits of the voyage insured were in terms described in the policy, and as there was no regular and settled course known to all traders, different from that so described, the ship was guilty of a deviation by putting first into Cockenzie, and the underwriter was thereby discharged from his liability.[3] So, where a ship was insured, "at and from London to Trinidad and the Spanish Main," with liberty to "call at any or all of the West India islands and settlements, Domingo and Jamaica excepted," it was held, that this liberty of calling must be confined to places taken in the direct and customary course between the *termini* of the voyage insured, and could not protect the ship, after having once sailed southward as far as Jamaica, in then sailing northward up to Martinique and St. Thomas's, unless upon very satisfactory evidence that this was a customary course in such voyages.[4] And where a ship was insured, "at and from her *port of loading* in North America to Liverpool," it was held a deviation for the ship, after having taken in part of her loading at a place in one creek of a bay, to go afterwards to another place, lying eight miles off, in another creek of the same bay, to take in the rest.[5]

But where a ship was insured on her homeward voyage, "at and from Martinique *and* all or any of the other West India islands to London," and the ship sailed to take in her cargo at St. Domingo, a place very wide of the direct course of a voyage from Martinique to London; yet, under the policy, this was held to be no deviation.[6] So where a ship was insured, "at and from Pernambuco, or *any other port or ports* in the Brazils," it was held no deviation for the ship, after touching at Pernambuco, and finding

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1 Elliot *v.* Wilson, 7 Br. P. C. 459.
2 Hare v. Travis, 7 B. and C. 14.
3 Beatson *v.* Haworth, 6 T. R. 531.
4 Gardner *v.* Senhouse, 3 Taunt. 16.
5 Brown *v.* Tayleur, 4 Ad. and E. 241.
6 Bragg *v.* Anderson, 4 Taunt. 229.

she could procure no cargo there, to sail to St. Salvador, another port in the Brazils, in order to obtain one, although St. Salvador lies 500 miles to the *southward* of Pernambuco, a direction diametrically opposite to the direct course of a voyage from Pernambuco to London.[1] Where also a ship was insured, "at and from Antigua to England, with liberty to touch at all or any of the West India islands, *Jamaica included;*" and, in order to complete her homeward cargo, the ship put into St. Kitts, which is wide of the direct course of a voyage from Antigua to England:—it was held, that this was no deviation, for, by including Jamaica, which lies at least 500 miles out of the direct course of that voyage, the plain meaning of the parties was, that the islands might be touched at without regard to their lying on or off such direct course.[2] And under a policy on goods, in the most ample terms, at and from five different ports enumerated, not in their geographical order, "with leave to touch, stay, and trade at all or any ports or places whatsoever or wheresoever in the East Indies, Persia" (the nearest port in which was more than 1000 miles out of the direct course of a voyage from any of the enumerated ports to Europe), "or elsewhere;" the ship took in *part* of her cargo at Batavia, and then proceeded to Sourabaya, lying 400 miles to the eastward of Batavia, and directly out of the course from it, or any other of the four enumerated ports, to Europe, and there took in the remainder of her cargo, and returned to Batavia, whence she sailed to Europe, and was lost:—it was held, that the order in which the places stood in the policy showed clearly that a voyage in the direct geographical course was not thought of, and that the trading could not be intended to be confined to such ports or places only as the ship touched at in the *direct* course of a voyage from Batavia, &c., to Europe, for the clause itself gave a liberty so to trade at any ports or places whatsoever in the East Indies, *Persia*, or elsewhere.[3]

These are only a few of the cases that have occurred as to ports of destination, calling, loading, or discharge, but these sufficiently show, that if ports or places of loading, calling, or discharge are named, these ports or places must be visited in the order in which they are named,—or, if these be not named, or merely referred to generally, then the captain must take the ports or places in the *geographical* order in which they occur, unless a different practice has been established by long and well-known custom;—and when, in the charter-party or policies, have been inserted the words generally "to touch, stay, trade," &c., the captain will require specially to attend to the meaning which has been given to these words by the courts, which will be found under the proper head in the Law of Insurance to which the foregoing matters belong; but the captain should bear in mind, that these words give him no power to alter the regular course of the voyage, to substitute another voyage for the one agreed on, or to adopt any intermediate voyage, not sanctioned by the usage of trade, or not having for its object the accomplishment of the original voyage.

If, either from stress of weather, the necessity of repairs, or need of water or provisions, the captain is compelled to put into a port out of the usual course of the voyage, he must remain no longer than the necessity requires, and must, without delay, resume the proper course of his voyage; but, while

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[1] Liddard *v.* Lambert, 5 Taunt. 480. [2] Metcalfe *v.* Parry, 4 Camp. 123.
[3] Hunter *v.* Leathley, 10 B. and C. 858.

so detained at a port of necessity, there seems no objection to his taking in additional goods, if the state of the ship admit of it, and no additional delay or risk be thereby occasioned.

When arrived at the port of destination, the captain must take care, in the first place, that his ship is safely moored in the harbour, or at the place of discharge, according to the custom of the port or place; and, next, that his ship, cargo, and crew are duly reported, according to the laws of the country or port.

The Customs Laws for Exportation and Importation, in the different trades, are given in subsequent chapters; and the law of Stoppage *in transitu*, or on the voyage or passage, will be fully considered in the chapter under that head; but here it may be observed, that if due notice has been given to the captain not to deliver, he ought not to make delivery of the cargo, in terms of the bill of lading. He does not require to judge whether the notice of stoppage has been rightly given, or by the proper party, or whether it may be effectual or not,—it is sufficient that such notice has been given; and, although it is a common practice to deliver the cargo, upon receiving an indemnity against all risk, yet even that is not to be trusted to. His safest course is, on the expiry of the lay-days, to deliver the cargo into a public warehouse or to a wharfinger, in order to secure his lien for the freight, and at the risk and for behoof of all concerned, and to intimate to the parties, under form of notarial protest, that he has done so.

Assuming, however, that no such notice of stoppage has been given, the captain is bound to deliver the cargo to the consignee, or persons named in the bills of lading, or to the holders of these bills *duly endorsed*, upon production of the bills, and upon payment of the freight and other charges. It is not the *duty* of the *captain* to send notice of his arrival to the consignees or the other parties named, although their residence be known to him; but it might be, at least, prudent for him to do so. The delivery, and the manner of delivery, must be expressly in accordance with the terms of the bills of lading, and according to the practice and custom usually observed in the port or place of delivery, and the usage of particular trades; and the responsibility of the captain continues until actual delivery to the persons named, or their servants or wharfinger, either in boats or on land. As to an action on a contract to convey goods by steam-boat from Dublin to London, and to deliver them to a person named, or assigns, at the Port of London,—it was pled, that the goods were safely landed and deposited at a certain wharf at the Port of London, there to remain until the same could be delivered to the person named, or his assigns, the wharf being a place where goods by steam-boats from Dublin were accustomed to be landed, and was a fit and proper place for such purposes, and that, before a reasonable time elapsed, the goods were destroyed by a fire which broke out by accident: but this plea was held bad.[1]

If the goods have to be delivered over the ship's side, or if the *captain* is desired to deliver them over the ship's side, he has no right to detain them for wharfage dues, but he must so deliver them, on tender of the freight and charges. When the goods are to be landed in lighters, the general rule is, that the responsibility of the *captain* continues until the lighters are fairly loaded and released from the ship; and although, by the

[1] Gatcliff *v.* Bourne, 4 Bing. *n. c.* 314.

practice of the river Thames, the captain is not bound to take charge of a lighter employed in unloading a ship, after the lighter has been fully laden, up to the time it can be removed from the ship to the wharf;[1] yet it has been held that the captain is bound to watch the goods so unladen into a lighter, until the lighter is fully laden, and that he cannot discharge himself of this obligation by telling the lighterman that he has not hands sufficient on board to take care of the lighter and the goods.[2]

If the ship has encountered storms or bad weather on the voyage, it is the duty of the captain to cause a notary public, or, in a foreign port, the British consul, to note a protest against wind and weather, as it is termed, —that is, a protest narrating the particulars of the voyage, the storms or gales encountered, and the particulars of any loss or damage, incurred or anticipated, as entered in the log-book, and protesting that any damage that has been or may be sustained was caused by the winds, storms, and bad weather. A regular instrument of protest may be extended afterwards in the proper form, but, in practice, this instrument is seldom required. And, when a certain number of lay-days are fixed for the delivery of the cargo, the captain must await that time, or, if no lay-days have been fixed, he must await the usual and customary time allowed at the port of discharge for that purpose; and if, on the expiry of that time, the cargo be not fully unladen, he ought then to protest against the merchant or consignee, so that the ship may thereafter lie on demurrage. The lay-days are reckoned from the ship's arrival *at the usual place of discharge in* the port, and not merely from her arrival *at the port;*[3] and if the cargo has to be discharged in a dock, the lay-days are calculated from the day of the ship's arrival in the dock, and not from the day of her coming to a discharging berth in that dock.[4]

When, during a voyage, losses have been sustained which have to be made good by a general average contribution upon the several parties concerned, it is the duty of the captain, before delivering any part of the cargo, to take a bond from these parties, called an average bond or agreement, for payment of their several proportions of the average loss, according as these shall be determined by the average adjuster named; and this is the common practice in the case of a general ship.

From what has been already said, the duties of the captain to the underwriters can easily be inferred. He undoubtedly should know the terms of the insurance between the owners and the underwriters;—that the ship must be seaworthy;—that any *express* warranties appearing on the policy, as well as those which are *implied* in all policies, must be strictly complied with;—that the voyage described in the policy must be pursued by the shortest, the safest, and most direct course;—and that there must be no deviation from that course, unless in a case of justifiable necessity. In case of wreck, the *captain* must, acting on his own responsibility, and according to his own good sense, do the best for the interests of all concerned, as if there had been no insurance on ship or goods; and where there is an agent of Lloyd's in the vicinity, he ought to avail himself of that agent's advice and assistance.

Other two duties of the captain may here be noticed, as they are duties

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[1] Robinson *v.* Turpin, Peak's N. P. C. 202.
[2] Catley *v.* Wintringham, Peak's N. P. C. 150.
[3] Brereton *v.* Chapman, 7 Bing. 559.
[4] Brown *v.* Johnson, 10 M. and W. 331; Tapscott *v.* Balfour, L. R. 8 C. P. 46.

of humanity, which he owes to the public generally. The first is, his duty to assist ships and persons in distress, which both the general laws of humanity and the interests of commerce specially favour; and if he takes the ship out of her regular course for this purpose, it is not deemed a deviation. By Part VIII. of the Merchant Shipping Act, sec. 442, whenever any ship or boat is stranded or in distress, at any place on the shore of the sea, or of any tidal water within the limits of the United Kingdom, the Receiver can, with the view to the preservation of the ship or boat, persons, cargo, and apparel, require the captain or other person having the charge of any ship or boat near at hand, to give such aid with his men, ship, or boats, as may be in his power; and any person refusing, without reasonable cause, to comply with any summons, requisition, or demand so made, for every such refusal incurs a penalty not exceeding £100. And by section 479, if any person takes into any foreign port or place, any ship or boat stranded, derelict, abandoned, relinquished, or otherwise in distress, on or near the shore of the sea, or of any tidal water, within the limits of the United Kingdom, or any part of the cargo or apparel thereof, or anything belonging thereto, or any wreck found within the foresaid limits, and there sells the same, he is guilty of felony, and is subject to penal servitude for a term not exceeding four years.

Further, as to the employment of the ship, the general rule is, that the owners are bound to the performance of every lawful contract made by the captain relative to the usual employment of the ship,[1] and in the course of that employment. In a *home* port, and especially in the port of the owners' residence, this power to freight the ship, or enter into a charter-party, is held to be suspended by the presence of the owners themselves, or of a ship's husband duly appointed by them;[2] but, even in that port, a charter-party entered into by the captain alone will be good, if so entered into under such circumstances as afford evidence of the owners' consent, or from which that consent can be fairly presumed. Where the managing owner or ship's husband is not present, but where communication can be easily had with him or with the owners, a *prudent captain* ought not to enter into a contract for freight without the sanction of the one or the other. In a general ship, the *captain*, by receiving the goods in the course of the ship's usual employment, has full authority to bind the owners; and they are responsible for his acts, as their servant, in those things that respect his duty under them.[3]

In a *foreign* port, the captain has also full power and authority to enter into a charter-party, in the usual course of the ship's employment; and, in the absence of fraud, such contract entered into by him is binding on himself personally, as the only known and accredited agent of the owners, as well as on the owners, to the amount of the value of the ship and freight.[4] It has been held, accordingly, that where a charter-party was entered into by a captain, as such, with merchants who did not know that he was also a part-owner, they might, upon such contract, pursue both him and the other owners for the non-performance of such general duties, such as not providing necessaries for the voyage, as were not inconsistent with the stipulations in the charter-party.[5] But if the owners, by themselves

[1] Abbot, 90. [2] Ibid. 169. [3] Ibid. 90. [4] Ibid. 95.
[5] Leslie *v.* Wilson, 3 B. and B. 171.

or a ship's husband, have made a special contract for the employment of the ship, the captain cannot, under his general and implied authority, annul the contract so made, and substitute another for it, made by himself with the other contracting parties.[1] And the master of a trading ship sent to procure goods on freight cannot bind his owners by an agreement to carry goods free of freight.[2]

As to the authority of the captain to order repairs, stores, and supplies for the ship, the same distinction is received between these being furnished in a *home* and in a *foreign* port. The general rule undoubtedly is, that the owner is liable for *necessary* repairs done to his ship by the captain's order; and it has been held, "that whatever is fit and proper for the service on which a vessel is engaged, whatever the owner of that vessel, as a prudent man, would have ordered, if present at the time, comes within the meaning of the term 'necessary,' as applied to these repairs done or things provided for the ship by the order of the master, for which the owners are liable."[3] Under this general authority of the captain, he can make contracts, and do all things necessary for the due and proper prosecution of the voyage in which the ship is engaged; and it has been held, that the captain has authority, both at home and abroad, to bind his owners for repairs or stores ordered by him which are necessary for the equipment and navigation of the ship in the voyage or trade in which the owners employ her.[4]

This authority, however, does not extend to cases where the owner himself can personally interfere, as in a *home* port, or in a port in which he has an appointed agent, who can personally interfere to do the things required. Therefore, if the owner or his general agent be at the port, or so near to it as to be reasonably expected to interfere personally, the captain cannot, unless specially authorised, or unless there be some custom of trade warranting it, pledge the owner's credit at all, but must leave it to him or his agent to do what is necessary. "But if the ship be in a *foreign* port, where the owner has no agent, or in a British port, at a distance from the owner's residence, and provisions and other things require to be provided promptly, there the occasion authorises the *captain* to pledge the credit of the owner *for* such things as are necessary or reasonably fit and proper for the ship or the voyage, under the circumstances of the case; and it may be also necessary, in some cases, to pay harbour dues or pilotage, or the like, in ready money,—and if that be the case, and the prosecution of the voyage cannot take place till these are discharged, then also a necessity for having money in specie may arise; and if so, the captain would be entitled, under his general power of doing all things necessary for the prosecution of the voyage, to procure money on loan, and to bind the owner by a contract for that purpose. It is not doubted that, in a foreign port, where the owner has no agent, this may be done, and we think that all these questions are referable to one general principle, although, when it is applied to a case like the present (the master of a coasting vessel borrowing money), it will require stronger circumstances to establish the fact of the necessity upon which the liability of the owner must depend."[5]

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[1] Burgon *v.* Sharp, 2 Camp. 529.
[2] Dewell *v.* Moxon, 1 Taunt. 391.
[3] Webster *v.* Seekamp, 4 B. and A. 352.
[4] Frost *v.* Oliver, 1 E. and B. 301.
[5] *Per* Alderston, B., in Exch. in Arthur *v.* Barton, 6 M. and W. 188.

If money is thus advanced, the party advancing money to the captain is bound to prove that the supply was necessary and proper for the occasion; and this must not be understood of an indefinite supply of cash, which the master can dispose of at pleasure;[1] the lender must prove that the money was expressly borrowed for the purposes of the ship;[2] that the specific sum so advanced was necessary for the use of the ship, and that it was so applied in fact.[3] It cannot be doubted that this can be done in a foreign port, where the owner has no agent; but also in a port of this country, at a distance from the owner's residence, and no timeous communication can be had with or from him, the captain has authority, under urgent circumstances of necessity or distress, to pledge the credit of his owners for money advanced to him for the necessary purposes of the ship or voyage, which will require to be proved; yet it must be kept in view, that there is this distinction between the supply of necessaries and the advance of money,—that though, in both cases, the burden of proving the necessity lies upon the party supplying or lending, there is, wisely and properly, a difference between the two as to the extent and strictness of the proof required, as is shown by the cases referred to; and although the owners will be liable for money honestly borrowed by the captain to pay for repairs and necessaries, they will be liable only for the amount which the lender can prove to have been *necessarily* expended for these purposes, and, consequently, where nothing has been so expended, the owners will not be liable for the money so borrowed.

The general rule is, that the captain may, in a case of need, pledge the personal credit of the owner for money borrowed by him for necessary repairs and disbursements, and hypothecate (pledge) *the ship* by a bond of bottomry, given at the same time with, and as a collateral security for, bills drawn on the owner for the money so borrowed, whether maritime interest be made payable on it or not. Thus, when a ship, after an absence of 4½ years in the transport service, was in the port of Portsmouth, upon her release from quarantine, and having received orders to proceed to Deptford, the captain borrowed money to pay seamen's wages—Portsmouth being a port of discharge,—and to pay tradesmen's bills for articles supplied for the use of the ship there:—it was held, that the owner was liable for the money so advanced to pay the seamen's wages.[4] And in the before-cited case of Arthur *v.* Barton, the captain of the coasting vessel was at Cardiff in Glamorganshire, but the owners were resident in North Wales,—and the captain having borrowed money at Cardiff, where the owners had no agent, and it being proved that such advance was necessary for the purposes of the voyage, the owners were held liable.[5] In this case, the law was stated to be, "that to justify the master in borrowing, it was not necessary that the occasion should arise in a foreign country, but that the case must be one of pressing necessity, when the master and owner cannot communicate without great prejudice and delay."

This law has been accordingly applied in the following cases, in which no "pressing necessity" for the captain's borrowing money could be made out.

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[1] Rocher *v.* Busher, 1 Starkie, 27.
[2] Thacker *v.* Moates, 1 M. and R. 79.
[3] Palmer *v.* Gooch, 2 Starkie, 428.
[4] Robinson *v.* Lyall, 7 Price, 592.
[5] Arthur *v.* Barton, 6 M. and W. 188.

In one case, it was held, that the captain had no presumed authority to pledge the credit of the owner, in respect of necessary supplies and advances for the ship's use, during several weeks at Newport, Monmouthshire,—the owner during all the time having resided at Plymouth, and nothing appearing to have prevented a communication, if desired, between the master and owner.[1] In another case, the ship was at Swansea, and the owner at Llanelly, only 11 miles distant, and the captain, being in want of money to clear the ship, and having been unable to raise it (as the owner directed), by selling part of the cargo, sent three messages to the owner for money, but received none,—whereupon he borrowed £10, telling the lender of the applications to the owner:—it was held, that the captain was not authorised to borrow, and that the lender could not recover the money from the owner, though it had been found by the jury that the money was advanced for the necessary use of the ship, and on the credit of the owner, not of the captain.[2] So also a claim for advances made to the captain of a foreign ship was not sustained, on the ground of fraudulent collusion between the captain and the party who pretended to have made the advances,—the owner's agent being on the spot, and ready to supply the necessary funds.[3]

Not only are the owners liable for necessary repairs, stores, and provisions furnished by orders of the captain, or for money borrowed by him to pay for these, but he himself is also personally liable; and he will not be freed from this personal liability, though the owners become bankrupt,[4] unless it appear that, at the time, the repairs, &c., were not made upon his personal responsibility, and that the credit for these had been given to the owner alone.[5]

For such repairs or furnishings, or for money so borrowed by him, the captain cannot charge the ship, by *his mere verbal engagement*, that the ship shall be liable, though supported by bills of exchange drawn as a personal security by the captain on the owner; but the master can, however, in a foreign port, and in some cases also in a home port, and in such circumstances of extreme necessity as warrant it, borrow money to pay for repairs and necessaries for the vessel, and hypothecate the ship, cargo, and freight as security for the sum so advanced; and this is done by BONDS OF BOTTOMRY AND RESPONDENTIA, which are afterwards considered;—or, if the original ship has been so disabled by the perils of the sea, in the past part of the voyage, as to be compelled to take refuge in a port of distress, where the captain or owner has no means of raising money to repair the ship, if repairable, and therefore the captain can, in such extreme circumstances, tranship the cargo to another bottom, and forward it to the proper port of delivery, at the same rate of freight,—or, if that cannot be attained, then, acting as an honest man of prudence and judgment, *and as an agent for the shipper*, even at a higher rate.[6] And, in such a situation, and from a justifying necessity for funds, the captain can sell part of the cargo (for the value of which his owners will be liable),[7] and also the ship itself *as a wreck*,[8] as will now be seen.

But if the owner of the goods or his authorised agents appear on the spot to claim the goods, and thus prevent the captain forwarding them to their proper destination, he is entitled to the goods, upon paying for them the

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1 Stonehouse *v.* Gent, 2 Ad. and E. *n. s.* 431.
2 Johns *v.* Simons, 2 Ad. and E. *n. s.* 424.
3 *The Helena Sophia*, 314; Rob. Adm. C. 265.
4 Hussey *v.* Christie, 13 Ves. Jun. 594.
5 Essery *v.* Cobb, 3 C. and P. 358.
6 Shipton *v.* Thornton, 9 A. and E. 337.
7 Freeman *v.* E. I. Co., 5 B. and A. 617.
8 *The Margaret Mitchell*, 4 Jur. *n. s.* 119.

agreed-on freight, according to the proportion of voyage performed, and the salvage; and, in such a case, the law infers a new agreement to pay freight in this manner.[1] If, however, the captain *decline or refuse* to forward the cargo from the port or place of necessity to the port of destination, in such case the freighter is entitled to the cargo without payment of any freight.[2] But if the captain is prevented by the freighter from forwarding the goods to their proper destination, which he is ready and willing to do, then the freighter puts an end to the voyage at this port or place of necessity, and becomes liable for the whole agreed-on freight.[3]

Again, put the case that the ship and her cargo are at a port or place of necessity, where the ship can be repaired, but the captain has no funds or credit, and the owners of the ship, as well as the shippers and consignees of the cargo are in a distant country, and may be unknown to him,—but the repairs require to be done expeditiously, and the vessel supplied with necessaries and refitted for the continuatiou of her voyage,—and to pay for these repairs and necessaries, money cannot be raised upon bottomry or respondentia. In these circumstances of necessity what can the captain do? One of two courses may be adopted by him. He can hypothecate the whole ship, cargo, and freight, of which afterwards,—or he can sell a part of the cargo, for the purpose of applying the proceeds to discharge the expense of the repairs and necessaries requisite to fit the ship for the continuation of her voyage;[4] and this last is now to be considered, being a matter with which the underwriters have nothing to do, and in doing which, the Vice-Admiralty Courts abroad have no power, by interposing a warrant of a local Vice-Admiralty Court, to authorise a captain to sell a part of his cargo.

Therefore a captain, in wishing to sell part of his cargo after every other source has been tried and has failed, must act upon his own responsibility. In general, he may be taken as an utter stranger to the cargo, which has been confided to his care for the purpose of safe conveyance to its destination, and to this purpose his duties are primarily directed. He has no power to sell any part of his cargo, *unless, by an absolute necessity*,—an unforeseen and unprovided necessity,—the character of agent and supercargo is forced upon him,—not by the immediate act and appointment of the shipper, but by the general policy of the law, by which the authority of agent for the shipper is necessarily devolved upon the captain, to do the best for his interest, and that is, to sell,—especially if the cargo is perishable, and would perish if left to itself, or in being forwarded to its place of destination. But the law does not fix any definite part to be sold, as the captain's power of selling part of the cargo can only be resorted to in the last extremity, when every other expedient has failed, and every other resource is hopeless; so this power can only be exercised to an extent adequate to the occasion of necessity, and must be limited to that necessity from which alone it arises.

The two preceding paragraphs are taken from the celebrated judgment of Lord Stowell (Sir William Scott) in the case of *The Gratitudine*, and the judgment of Baron Parke in Vlierboom *v.* Chapman (13 M. and W. 258); and it may be useful to notice some cases, in which this power was held to

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1 Luke *v.* Lyde, 2 Burr. 889; *The Newport*, 1 Swabey, 535.
2 Hunter *v.* Prinsep, 10 East, 378.
3 Lutwidge *v.* Gray, H. L.
4 *Per* Lord Stowell in *The Gratitudine*, 3 Rob. Ad. R. 255.

have been improperly or unnecessarily exercised by the captain. These cases arrange themselves as follows :—(1.) Questions between the shippers and the shipowners as to the captain's power to sell, and the necessity for the sale : (2.) Questions between the shippers and the underwriters on goods as to liability for the insured value of the goods so sold : and (3.) Questions as to the freight of the goods thus sold.

1.—*The Power of the Captain to sell part of his Cargo for the needful Repairs of the Ship, and Supplies and Necessaries for the Voyage.*

From the authorities before referred to, it cannot be doubted that, in a case of unforeseen and unprovided necessity, where all other means and resources and every other expedient have failed, the captain has the power of raising money to pay for these repairs, supplies, and necessaries, by selling part of his cargo. But, then, the *absolute necessity* for so doing must be very clearly made out, and he must act fairly and honestly, and as a prudent man uninsured would do, in the circumstances, according to the best of his judgment, for the benefit of all concerned.[1] And still the question remains—Why was this unprovided necessity allowed to occur, and upon whom should the loss fall?

In one case, the ship, in the course of a voyage from India, was wrecked off the Cape of Good Hope, and some indigo, part of the cargo, was saved, and was sold there by authority of the captain, acting in good faith, and according to the best of his judgment, for the benefit of all concerned; but there was no absolute necessity for the sale; and as, unless in cases of absolute necessity, the captain has no authority to sell,—it was held, that the purchaser at the sale acquired no title, and, the indigo having been sent to this country, that the original owners were entitled to recover its value.[2] In another case, the captain of a ship which was injured by the perils of the sea, put into the Mauritius, and there abandoned the ship and cargo, which were afterwards sold under an order of the Vice-Admiralty Court there,—the cargo was not damaged nor perishable, nor was there any pressing necessity for the sale of it:—in an action by the owners of the cargo against the purchasers of the goods,—it was held, that the captain had not any authority to sell the cargo, though acting in good faith, and under the authority of the Vice-Admiralty Court,—and that the owners of the cargo were entitled to recover the value of the goods from the purchasers.[3] So, also, a cargo of opium was shipped at Calcutta, and, by the bill of lading, was to be delivered to the consignees at Hong-Kong; the ship came into collision with another ship at sea, and was so much injured that she had to put in for repair at Singapore, and there the cargo was found to be partially damaged by the salt water; it appeared that the master might have had the damaged opium dried and repacked, while his vessel was refitting, and could have forwarded it, though deteriorated in value, with the other opium,—but he, acting in full honesty, and to the best of his judgment, selected the damaged chests of opium, and sold them by auction, and forwarded the remainder to Hong-Kong :—in an action by the con-

[1] The master should communicate with the owner of the goods before selling, if that be practicable. Australian Steam Co. *v.* Morse, L. R. 4 P. C. 222.
[2] Freeman *v.* East India Co., 5 B. and A. 617.
[3] Morris *v.* Robinson, 3 B. and C. 196.

signees against the shipowners, for the value of the opium damaged and sold, it was held, that it was the duty of the captain to carry the cargo to its place of destination, as the goods could have been delivered in a merchantable, though in a damaged state.[1] And in the following case, an agent in Russia of an English merchant residing in England, shipped in Russia a cargo of deals in a Prussian vessel, of which a Prussian was owner, for conveyance to Hull, and consigned to the English merchant, under an ordinary bill of lading;—and the vessel was wrecked on the coast of Norway, but the cargo was brought safely on shore, and could have been refreighted and sent on to England:—by the law of Norway, a captain, placed in the aforesaid position, though responsible to the owner of the cargo if he sold improperly, had power to sell his cargo, so as to give a fair purchaser a good title; and, in the exercise of his discretion, and without any absolute necessity, the captain sold the cargo to an uninterested purchaser, who sold it again to another, by whom it was sent to England, and there it was claimed by one representing the English merchant, the original owner, and an action was brought for it;—but, on the grounds that the property in the cargo passed, according to the Norwegian law, to the purchaser, by the sale in Norway,—that the courts of this country will recognise the Norwegian law in this respect,—and that this property could not be set aside by the cargo having been afterwards brought to England, —it was held that the action could not be sustained.[2] It will be observed that in this case the court ascertained the extent of the captain's authority with reference to the law of the country (Norway) where the sale was made. It would appear, however, that his authority is more properly measured by the law of the flag under which he sails.[3]

2. Then the next question is—Are the underwriters on the goods so sold liable to the owners of these goods for the loss sustained by their goods having been thus sold by the captain? If the captain's act in selling part of his cargo was an act of unforeseen and absolute necessity then this loss upon the owners of the cargo must be borne by some of those concerned. But the loss by selling at an intermediate port of necessity is not a loss accruing from any accident or misfortune which happens at sea, or by tempests, &c., or any of the risks or perils insured against. In the broadest sense of the words, this loss arises from an unforeseen and unprovided necessity, not comprehended under the terms of the policy, and for which, therefore, the underwriters are not liable. And this was accordingly found in the following cases:—In one case, goods were insured, and, in the course of the voyage out, the ship was so disabled by the perils of the sea as to be incapable of pursuing the voyage, and was obliged to put into a port to repair, and the captain, having no other means of raising money to pay for these, sold part of the goods and applied the proceeds in payment of the expense of these repairs:—it was held, that the underwriter was not liable for this expense, the loss not being from perils of the sea, but from the captain's want of funds to pay for the repairs, though the *remote* cause of the loss was the perils of the sea.[4] And, in another case of goods insured, the ship was also disabled by the perils of the sea, and was

1 Trouson *v.* Dent, 8 E. F. Moore's P. C. C. 114.
2 Cammell *v.* Sewell, 6 Jur. *n. s.* 918.
3 Lloyd *v.* Guibert, 33 L. J. Q. B. 241, and L. R. 1 Q. B. 115 (on appeal).
4 Powell *v.* Gudgeon, 5 M. and S. 431.

obliged to put into an intermediate port to repair; and, in order to pay the expense of these repairs, the captain, having no other means of raising money, sold part of the goods, and applied the proceeds to payment of the expenses:—but it was held, that the underwriter on goods was not answerable for this loss.[1] The claim by the shipper of the goods sold must be against the owners of the ship, to pay for the repair of which his goods were thus sold.

And, 3. Is the shipowner, or party in right of freight, entitled to freight for the goods sold? or, Is the underwriter on freight liable for the loss of the freight of these goods?

In general, the freighter undertakes to pay the agreed-on freight, only on the cargo being delivered to him, or the consignee, at the ship's port of discharge; and if the goods *be accepted*, and delivery of them taken at a port short of that port, freight will be due according to the portion of the voyage that may have been performed; but where the shipowner could not, by the perils of the sea, carry forward the goods to their port of destination, and part of these goods had to be sold by his captain at the port of necessity, specially for the purpose of paying the expense of the repairs absolutely necessary to enable him to do so,—no freight at all is due for the goods sold. And this is well exemplified in the following case:—A cargo of rice was shipped at Batavia, and, by the bill of lading, was to be delivered at Rotterdam to the consignee named, he paying freight for the same; but the vessel having encountered a hurricane, was compelled to put into the Mauritius, where the rice, having been found to be damaged and in a state of rapid putrefaction, was sold by the master, of necessity, though acting honestly, but without the knowledge of either the shipper or shipowner:—under these circumstances it was held, that no freight was due, either for the whole voyage or in respect of the part performed.[2] And the same reason applies, even more strongly, to a case where, in a port of necessity, the captain cannot pay, unless by selling *part* of the cargo, for the necessary repairs, without which the ship could not proceed on the voyage, nor earn *any* freight, that freight being only earned by the safe carriage of the cargo to the port of destination, and according to the goods delivered there.

So, also, in a case on an insurance of freight, the ship had, in the course of her voyage, been injured by a peril of the sea, and was obliged to put into a port, and land the whole of her cargo, part of which was found to have been so wetted by sea-water, that it could not be re-shipped from a danger of its spontaneous combustion, unless it was put through a process which would have detained the ship six weeks, and would have been attended with an expense equal to the freight; therefore the captain sold these wetted goods, and finding that he could not obtain other goods, he sailed on the voyage, and arrived at the port of destination with the rest of the cargo: yet, though these proceedings were such as a prudent man, uninsured, and in the sound exercise of his discretion, would have adopted, the underwriters were held not liable for the loss of the freight of the goods so sold.[3] But if, under these circumstances, a prudent man, uninsured, and in the exercise of his sound discretion, would sell,—equally, if

[1] Sarguy *v.* Hobson, 2 B. and C. 7. [2] Vlierboom *v.* Chapman, 13 M. and W. 230.
[3] Mordy *v.* Jones, 4 B. and C. 394.

not more so, is a captain called upon to sell part of his cargo, when, in a port of necessity, his ship has been repaired and refitted for the voyage, but he has not any funds, or credit, or means, or resources, to pay for these, unless by selling a part of his cargo.

Besides the powers necessary for the navigation of his ship, and for conducting the voyage to a safe termination, the captain has also power, when such a termination becomes hopeless, and no prospect remains of bringing the vessel to her appointed port, to do the best for all concerned, and, therefore, to dispose of her for their benefits :—it is a case of necessity, when nothing better can be done for the captain's employers, for a captain has no power to sell, unless from necessity, considered as an impulse (*i.e.*, a cause or reason forcing him to sell), and "acting *morally* to excuse his departure from the original duty laid upon him of navigating and bringing back *the vessel.* If he has no means of getting the repairs done in the place where the injury occurs, or if, being in a place where they might be done, he has no money in his possession, and is not able to raise any, then he is justified in selling, as the best thing that can be done."[1] If "it appears that the vessel was in a place where the repairs could be done, and where money could be obtained, although at an extravagant expense,—still the question is—whether the expenditure was so great, that no prudent man, in the exercise of a sound and vigorous judgment, would hesitate as to the propriety of selling. If the owner, had he been on the spot, uninsured, would, in the exercise of a sound discretion, have repaired the vessel,—or if an agent of the underwriter had been there, he, exercising such discretion, would have repaired, then the captain ought certainly to have done so; but if they would not have done so, then the captain was not compellable to repair, and the sale, in such case, will have taken place under a justifiable necessity."[2] But "it must, in the first place, be shown that there was a necessity for the sale,—and then it remains to be considered, whether it was such as, by law, would give the master a right to sell;—there must be the clearest proof of the necessity; it must be shown, not only that the vessel was in want of repair, but, likewise, that it was impossible to procure the money for that purpose."[3]

These are, therefore, the established principles by which the necessity for a captain selling his ship at a port of necessity has to be tried; and it will be proper to state a few cases in which these have been applied.

In an insurance case,[4] the ship was so much shattered in a storm, that the expense of repairing her would have exceeded her original value, and the captain, acting in good faith, sold her as she lay, for behoof of all concerned; and the purchasers having brought her to a place where, had it been judged prudent, she might have been completely repaired, she was there broken up :—the urgent necessity for the sale having been satisfactorily proved, it was held, that it was fairly and honestly made for the benefit of all concerned, and that such sale by the captain was proper. If the ship is in a foreign port, and cannot be sent on her voyage without repairs, and the repairs cannot be done unless at so great and so certain a loss that

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1 *Per* Parke, B., in Hunter *v.* Parker, 7 M. and W. 3.
2 *Per* Tindal, C.J., in Soames *v.* Sugrue, 4 C. and P. 276.
3 *Per* Sir W. Scott (Lord Stowell), in *The Fanny and Elmira*, Edw. Ad. Rep. 117.
4 Robertson *v.* Clarke, 1 Bing. 445.

no prudent man would venture,—this constitutes a case of necessity, justifying a sale by the captain.[1] As, in another insurance case, the underwriters agreed that the ship should be considered, and was allowed, to be seaworthy in her hull, tackle, and materials for the voyage, and the insured had declared that, to the best of their belief, and according to their knowledge and information, the ship, at the time of the insurance, was in all respects seaworthy for the voyage ;—but during the voyage, the vessel, by stormy winds and tempestuous weather, and by the force and violence of the wind and waves, became leaky, strained, riven, and damaged, so that, for her preservation, it became necessary to sail to the harbour of Gambia, the nearest port of safety, on arrival at which, she was unfit to prosecute her voyage, unless great repairs were done to her, which could not be obtained at Gambia, to enable her to proceed on her voyage, or to any other port to be repaired, and it became expedient and necessary to sell the ship :—it was held, that the loss of the vessel was occasioned by the perils insured against.[2]

Therefore, in order to justify a captain in selling his ship at a foreign port, without authority from his owners, there must be clear proof of an urgent necessity for his selling; and this necessity, which the law requires, is not *an absolute impossibility* of getting the ship repaired,—for if the ship, being in a foreign port, cannot be there repaired, and cannot be sent on in her voyage without repairs, which can only be done at so great an expense as no prudent person would venture to,—that will be a case of necessity, which will justify the captain in selling.[3] Such a sale by the captain, in a foreign port, can, however, only be justified by proof of this urgent necessity[4]—as where a British vessel in a foreign port was surveyed, and was pronounced unseaworthy, and not worth repair, and the captain sold her without authority from the owner :—this sale was, notwithstanding, held to be valid against the owner.[5]

It will now be proper to look at those cases in which it has been held that, under the circumstances, the captain had no power to sell his ship.

And in the case of *The Fanny and Elmira*, an American ship, already referred to, the ship was damaged on the rocks in Sligo Bay, in Ireland, and surveyors reported that it would require £1500 to repair her,—a sum far exceeding the value of the vessel,—and that it would be for the interest of those concerned to have her sold; she was accordingly sold by public roup for £350; and the purchaser, by the master's desire, paid part of the money into the hands of the owner's agents at Sligo, and carried the remainder to account between the master and him ;—shortly after the purchase, the purchaser offered the master a fourth part of her, at the same price, if he would again navigate her as master, which being agreed to, she was repaired for £800,—sailed to Riga,—and was taken in her return thence to London; the American owner's agents in Sligo declared that they had been ready to make any advances that might be found necessary: —and the Court of Admiralty, on the grounds that it had not been shown that it was impossible to procure money for the repairs, and that there

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[1] *The Australian*, 1 Swabey, 480. [2] Parfitt *v.* Thompson, 13 M. and W. 392.
[3] Lapraik *v.* Burrows, 13 Moore's P. C. C. 132.
[4] *The Margaret Mitchell*, 1 Swabey, 382. [5] *The Glasgow*, 2 Jur. *n. s.* 1147.

was no necessity for the sale, ordered the ship to be restored to the original owners.[1] In another case, a vessel had encountered a hurricane, and was driven on the shore of Jamaica;—the master made the usual protest, and applied for survey, which the deputy naval officer of the island appointed to be made by four masters of vessels;—they reported on oath,—that the ship had settled on a sandbank four feet, with a bank of sand between her and the sea of twice her length, and not more than two feet water on the sandbank,—and that, from the great expense and little chance of succeeding in getting her afloat, it would be most for the advantage of all concerned to sell her as she lay, with all materials;—the consignee of the vessel advertised her for sale as a wreck,—acted as auctioneer,—and charged his commission; one of the surveyors attended and bade at the sale, and the vessel was sold to another person for £864,—who sold her to another,—who again sold her to other three persons, one of whom was his brother-in-law, and another one of the masters who surveyed the vessel;—she was got off the sandbank with considerable difficulty, and very little injured; and, after some slight repairs, returned to England with a full cargo:—and, in an action at the instance of the original owners against the purchasers, it was found, that there was no necessity for the sale, and that, in the circumstances, it had been fraudulently made.[2]

In the following insurance case, an action was brought for a total loss by the sale of the ship, and the jury found:—1st, That the master appeared to have acted according to the best of his judgment; 2d, That the sale was conducted fairly and honestly; and 3d, That there was no necessity for the sale of the ship:—and therefore it was held, that the insured were not entitled to claim for a total loss, with benefit of salvage, but for an average loss only.[3] In another insurance case, the vessel had anchored in the roads of Buenos Ayres, where, in a few days, it was discovered that she leaked very fast, and the cargo was then discharged;—after ineffectual attempts to remove her, the vessel sunk next morning, being under water at high tide, but partly above it at low tide;—and, after so lying for six days, she was sold, by the advice of some shipmasters, on the ground that the expense of raising her would probably exceed her value;—the water having considerably subsided in the river Plate shortly after the sale, the purchaser succeeded in raising the hulk, and expended, in repairing her, about £1350, by which she could be used in coasting, although, not being coppered, she could not have brought to England a cargo of hides as contracted for, but she might have been taken in ballast, or with some sort of cargo:—the insured value was £2500,—the value of the vessel before the accident being from £2500 to £3000:—and, in an action on the policy for a total loss from perils of the sea, it was held, that the owners could not claim for a total loss, unless the sale was most beneficial for all parties.[4] In another insurance case, a vessel had been driven on the Thistle Rock, near Gottenburg, which so penetrated her bottom, that the crew were obliged to leave, for the preservation of their lives: after making several ineffectual attempts to float her off, and after obtaining the opinion of several parties as to the impossibility of

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1 *The Fanny and Elmira, ut sup.*
2 Hayman *v.* Moultan, 5 Esp. 65.
3 Maeburn *v.* Leckie, 1 Bing. 243.
4 Doyle *v.* Dallas, 1 M. and R. 48.

getting her off, and that the best course was to sell her as she lay, the master accordingly sold her for about £18 English money;—in five days the purchaser got her off the rock; and, after undergoing repairs, she cost him, in whole, including a sum for repairs, £750, while her then value was stated to be £1200:—but, in an action for a total loss by perils of the sea, it was held, that the master was not entitled, by selling the ship, fairly and honestly, to convert an average into a total loss, where there are any means of restoring the wreck to the character of a ship.[1]

There are, therefore, three essential requisites to render valid a sale of the ship by the master under such circumstances:—(1.) There must be a want of repairs, without which it would be impossible to navigate the ship. (2.) There must be an impossibility of procuring these repairs, either at the place, or on the credit of the parties interested, or of at all restoring the vessel to her character of a ship; and, (3.) After all expedients fail, the sale must be conducted with fairness and honesty, for the benefit of all concerned, and according to the best of the master's judgment. And, in reference to the captain's powers to sell the ship, it has been held:—(1.) That the validity of such sales must be tried by the law maritime. (2.) That by the law maritime, as well as by the British maritime law, the sale of a ship by a captain, though made fairly and honestly, can be justified only by urgent necessity; and, (3.) That where the circumstances of the case do not show this urgent necessity for the sale, the sale is invalid.[2] But when an English-owned ship was injured by collision at a foreign port, within telegraphic communication of England, and at which port resided a British consul and agent of Lloyd's; and the captain, believing the vessel would not be again fit for sea, sold her against the advice of the agent of Lloyd's, and without first fully communicating with his owner, and waiting his reply; and it subsequently turned out that the vessel was only slightly injured, and was, at a small expense, fitted for sea:—in these circumstances, the court set aside the sale by the captain.[3] And where a ship had gone on shore, and while on shore, had been sold by the captain to a party who succeeded in getting her off:—in an action against the underwriters for a total loss, it was pled, that had the captain exercised his sound judgment, or had been capable of forming a right opinion, the total loss might have been avoided; yet it was held, that the underwriters might give evidence that the captain, within a short time before the vessel sailed, was addicted to drunkenness.[4]

It lies upon the purchaser, or a first purchaser, from a captain, under such circumstances of necessity as authorise the latter to sell his ship, to prove the urgent necessity for the sale by him,[5]—a necessity which, though of a like character, must be more pressing than that which would justify him in hypothecating the vessel.[6] And though, as before observed, the order of a Vice-Admiralty or commercial court abroad for the sale of a ship by its captain is quite unnecessary and superfluous, yet, before selling his

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[1] Gardner *v.* Salvador, 1 M. and R. 118.
[2] *The Segredo alias The Eliza Cornish*, 17 Jur. 738.
[3] *The Bonita*, 5 L. T. *n. s* 141.
[4] Alcock *v.* Royal Exch. Assurance, 13 Ad. and El. 292.
[5] *The Australia, ut sup.; The Bomba* v. *The Charlotte*, 30 L. J. 141.
[6] *The Bonita, ut sup.*

ship in a foreign port, it is the duty of the captain to consult the resident, or nearest resident, British consular officer, the opinion of the consul being much considered by a court in determining the propriety and necessity of the sale.[1] And before adopting the extreme step of selling his ship, it is his evident duty to communicate fully to his owner the actual state of the ship as she lies, and, if at all practicable, to await his answer; and also, if the ship is insured, to consult, before selling, with the agent of Lloyd's, if there be one at that port of necessity. For the receiving of the purchase-money by the owner, and even letters written by him in ignorance of the circumstances under which a sale had taken place, will not be held to amount to an approval and a ratifying of such sale,[2] though this will not hold if the money has been received by him, while he was ignorant of the true state of the facts, and was retained by him without any intention of using it as his own, and, when he knew the true circumstances, paid that money into court, preparatory to his challenging such sale.[3] Yet, if the owner be dissatisfied with the sale of his ship, he must seek redress with the utmost possible quickness, otherwise his delay,—especially *unnecessary* delay,—may be held as acquiescence by him in the sale.[4]

It is also to be kept in mind, that it is required by section 53 of the Merchant Shipping Act, 17 and 18 Vict., cap. 104, when a registered ship is constructively lost, broken up (*i.e.*, "reduced to such a state, or placed in such a position, by the perils insured against, as to make its total destruction highly imminent, or its ultimate arrival, under the terms of the policy, exceedingly doubtful"[5]), or transferred to any persons not qualified to be owners of British ships, or ceases, by any other matter or thing, to be a British ship,—every owner or part-owner of that ship must immediately on getting information of such an event, give notice thereof to the registrar of the ship's port of registry, who, if no such notice has been previously given him, makes an entry thereof in his register-book; and unless when the certificate is lost or destroyed, the captain, within ten days after his arrival in port, delivers the ship's certificate of registry to the registrar, or, if there is not a registrar, to the British consular officer, either of whom forwards the ship's certificate so delivered to him to the registrar of the ship's port of registry. Every owner and captain who, without reasonable cause, fails to obey these provisions, incurs for each offence a penalty not exceeding £100. In regard to the ship's official log-book, section 287 requires that, when a ship, by transfer of ownership or change of employment, leaves off being a foreign-going ship as before defined (section 2), the captain or owner must, within six months, deliver or transmit to the superintendent at the port to which she belonged the ship's official log-book, duly made out to the time of her having left off to be a foreign-going ship; and, on failing to do so, he incurs, for each offence, a penalty not exceeding £10. If the ship has been lost or abandoned, the captain or owner must, if practicable, and as soon as possible, deliver or transmit to the superintendent foresaid the official log-book, duly made out to the time of the loss or abandonment; and failing his doing so, he incurs a penalty not exceeding £10.

Over seamen on board the authority of the captain is great, like as a parent over a child, or a master over an apprentice or scholar. They are

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1 *The Bomba, ut sup.* 2 *The Bonita, ut sup.* 3 *The Bomba, ut ante.*
4 Lapraik, *ut ante; The Australia, ut sup.* 5 Arnauld, 1025.

bound to obey his commands in everything relating to the navigation of the ship, and the materials, stores, and cargo, whether on board the ship, in boats, or on shore; and a ready and prompt obedience to these commands is essential to the due navigation of the ship and to the preservation of good order on board. And he can enforce obedience, and correct disorderly conduct, by imposing punishment upon the offender; but this punishment must be awarded with great caution, and after a calm and deliberate inquiry. On this subject, the observations of that learned judge and jurist—the late Lord Stowell—deserve the greatest attention. In one case he remarked—"It has hardly been disputed that, in a case of gross misbehaviour, the master of a merchant ship has a right to inflict corporal punishment upon the delinquent mariner; that right must be supported by the law of England, which is the proper authority for fixing limits within which one subject of the realm has a right to inflict corporal sufferings upon another. Upon that ground I dismiss all reference to the foreign maritime law, and I regret that so little upon this subject is to be found in our own. No statutable regulation exists upon this subject. The statute relating to merchant seamen (2 Geo. II., cap. 36) is silent upon it; the only authorities are supplied by the decisions of the courts of law, acting upon considerations of necessity and just discretion; and, upon such grounds, I think the following rules may be considered as sufficiently established:—In the first place, that the punishment must be applied with due moderation. It is asserted in some well-considered books, that the law gives the same authority to the master of a merchant ship to chastise his mariners for misbehaviour as a master possesses over his apprentice,—meaning, that it is inherent in him, upon the same grounds of necessity and sound discretion, in the one case as in the other,—not certainly to be used exactly in the way of an equal measure of punishment, because the apprentice is generally a youth of tender years, and whose acts of misbehaviour can hardly produce the same destructive consequences as may attend the negligence of the mariner, an experienced person of confirmed strength, capable of sustaining a severer infliction than could be applied to a stripling, and whose acts, even of negligence, may draw after them consequences fatal to all the lives and all the property on board the vessel. It is hardly necessary to add, as a corollary, that in all cases which will admit of the delay proper for an inquiry, due inquiry should precede the act of punishment, and, therefore, that the party charged should have the benefit of that rule of universal justice—of being heard in his own defence; a punishment inflicted without the allowance of such benefit is, in itself, a gross violation of justice. There are cases, undoubtedly, which neither require nor admit of such deliberate procedure. Such are cases where the criminal facts expose themselves to general notoriety, by the public manner in which they are committed, or where the necessity occurs of immediately opposing attempted acts of violence by a prompt reaction of lawful force, as in the disorders of commencing mutiny; these are cases that speak for themselves, and are of unavoidable dispensation. It may be a matter of prudence, but is not a matter of strict obligation in vessels of this kind, that the captain should communicate with the other officers of the vessel; nor do I find that any particular mode or instrument of punishment has received a particular recognition; that must be left to the common usage practised in such cases, and to the humane discretion of the person who

has the right of commanding its application."[1] And the same learned judge made the following remarks in a case of the same kind:—"It must be remembered that, in all acts of discipline and authority, passion is a bad counsellor, and that, on such occasions, care is to be taken to suppress even natural and honest feelings of resentment, which may have the effect of transferring a share of the blame to the other side of the question."[2]

While, therefore, he has full authority over all on board, and all are bound to obey his commands in regard to the navigation and management of the ship, for the preservation of order and discipline, and for the suppression of misbehaviour, misconduct, insubordination, and disobedience, he should be careful and temperate in the exercise of this power, and must recollect that there must be a particular entry in the official log-book, both of the offence and of the punishment, signed by the captain and by the mate, or some other of the crew, in terms of section 244 of the Merchant Shipping Act.

"By the common law, a similar power of moderate chastisement is given to the captain of a ship as is allowed to a parent and schoolmaster, but it is always desirable, and, indeed, the duty of the captain, to institute an inquiry, and to have entered in the log-book what the result was."[3] "I think that the persons most interested in this decision, and in the decision being made promptly without any delay, which might suggest the idea that there was some doubt on the subject, are the sailors navigating the commercial vessels of this country. Nothing can be more dangerous than that they should leave this country upon a foreign voyage under the impression that it is for them, and not for responsible officers, to direct how the discipline of the ship is to be carried on; and that, where a certain portion have engaged in mutinous conduct, which renders it impossible that the duty of the ship can be carried on, the remainder may erect themselves into a court of appeal, and determine against their officers, who are acting under the highest responsibility."[4] This power of the captain to punish can be exercised not merely at sea, but also in a foreign port or river.[5] And by section 267 it is enacted, that all offences against property or person, committed in or at any place, ashore or afloat, *out of* Her Majesty's dominions, by any master, seaman, or apprentice, who at the time of committing the offence is or has been, within three months before, employed in a British ship, are held to be offences of the same nature, and liable to the same punishments, and are to be tried, determined, and adjudged in the same manner, as if these had been committed within the jurisdiction of the Admiralty of England. It is also enacted by section 21 of the 18 and 19 Vict., cap. 91, that if any person, *being a British subject*, and charged with having committed a crime or offence on board a British ship on the high seas, or in a foreign port or harbour,—or if any person, *not being a British subject*, has been charged with having committed a crime or offence *on board* a British ship on the high seas, and is found within the jurisdiction of any court of justice in Her Majesty's dominions, which would have taken judicial notice of that crime or offence, had it been committed within the bounds of its ordinary jurisdiction,—then that court

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1 *The Agincourt*, 1 Hag. 272. 2 *The Frederick*, 1 Hag. 216.
3 *Per* Tindal, C.J., in Murray *v.* Moutrie, 6 C. and P. 471.
4 *Per* Garrow, B., in Lamb *v.* Burnett, 1 C. and J. 291. 5 Ibid.

has jurisdiction to hear and try that crime or offence, as if it had been committed within the bounds of that court's ordinary jurisdiction. And in virtue of this section it has been held, that a British ship on the high seas is part of the British dominions, and a foreigner on board a British ship on the high seas is subject to British laws;—and, therefore, if a foreigner does an act there which is a criminal offence by British laws (killing the officer who arrested him), he is responsible to that law, and may be tried for the offence, under section 21, before any court of justice in the Queen's dominions, having jurisdiction in such crimes when committed within its bounds, and within which jurisdiction the foreigner may be brought,—for, when so brought, he is, in the meaning of section 21, "found" within that jurisdiction. Nor is the liability of a foreigner to punishment for such an offence committed by him, nor the jurisdiction of the courts of this country to try that offence, affected by the fact that he was illegally and by force taken on board the ship, and was there illegally detained at the time of his committing the offence, unless it was committed for the purpose of releasing himself from the illegal detention.[1]

The captain can discharge a seaman, even at a foreign port, for mutinous conduct, theft, habitual disobedience, or drunkenness;[2] but occasional acts of drunkenness, not more than is usual among sailors, will not work a forfeiture of wages, and so would not warrant a dismissal.[3] Actual or open mutiny by the crew, or any part, the captain can lawfully resist, as in self-defence, and, though it be only threatened, he may use violent means to prevent or repress it:—such as, the holding of the fists to strike the captain, has been held to be so near an act of mutiny, that he can quell it by striking the first blow;[4] and it has been held, that insolent expressions, and acts of a mutinous tendency, not apologised for, work forfeiture of wages.[5]

The statutory enactments relating to the seamen, and their offences and the punishments, will be found under the subsequent titles; and as the engagement of the seamen is a direct personal engagement with the captain himself, he is directly and personally liable to them for payment of their wages, and can be sued for these wages, without regard to the owners. By section 188 of the Merchant Shipping Act, it is enacted, that any seaman or apprentice, or any person duly authorised on his behalf, can sue, in a summary manner, before any two justices of the peace (in Scotland, before the sheriff or any two justices) acting in or near to the place at which the service has terminated, or at which the seaman or apprentice has been discharged, or at which any person upon whom the claim is made is or resides, for any amount of wages due to such seaman or apprentice, not exceeding £50, over and above the costs of any proceedings for the recovery thereof, so soon as the same becomes payable; and every order made by these justices (or by the sheriffs or justices in Scotland) in the matter is final. The liabilities of the captain to the seamen, and the payment and recovery of their wages, will be more fully treated on after.

The captain is also personally liable for all repairs, furnishings, and

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[1] Cases of Lopez and Suttler, 4 Jur. *n. s.* 96, 98.
[2] Robinet *v.* Ship *Exeter*, 2 Rob. 261.
[3] *The Lady Campbell*, 2 Hag. 5.
[4] *The Lima*, 3 Hag. 343.
[5] *The Susan*, 2 Hag. 224.

stores ordered by him, and made and supplied on his credit, in a *home* port, unless he has taken care expressly to confine the credit to the owners alone. In a *foreign* port, he is, usually, the only person responsible known; and he has, therefore, authority, as the agent and servant of the owners, to order all repairs and furnishings necessary and reasonable for the ship, or fit and proper for the service on which she is engaged;—and for these, not merely the owners, but he himself, is responsible, not only as agent, but as liable for his own contracts.[1] His power to borrow money in a home port has been already noticed; and whether his owners be or be not liable for the money so advanced, there can be no doubt that he himself is personally liable to the lender.

It has been before shown that the captain has power to enter into contracts for the employment of the ship, in the usual course of that employment, and these contracts are not only binding on the owners, but he himself is also answerable for his own contract.[2] The bills of lading fix the receipt and custody of the goods upon the captain, and, in signing bills of lading, these cautions should be specially attended to:—That he should not sign bills of lading until the goods are actually on board, and according to the true number or quantity of the goods actually put on board;—that he should not deliver the signed bills of lading to any one, unless to the actual shipper of the goods,—and, if a receipt has been previously given for the goods when put on board, unless to the party who can give him the receipt in exchange for the signed bills of lading;—and that, having *once* signed and delivered bills of lading for the cargo on board, his power of doing so is at an end. He is bound to deliver the cargo according to these bills of lading, and in the like good condition as it was received, under the exception of the risks expressed therein. For some cargoes the captain usually makes the exception, under his signature, —"quantity and quality unknown;"—and in case of perishable goods,—"not liable for corruption;"—and, in such cases, if part of the goods has been lost, or if the goods have been deteriorated or destroyed, it must be proved that they have been so lost by some inevitable accident, or so deteriorated or destroyed by some internal defect or natural cause existing in the goods themselves. In a case of the latter kind, the captain must duly air and ventilate the goods in the usual and proper methods for doing so; and if it can be shown that the goods have deteriorated or have been destroyed for the want of this proper air and ventilation, he will be liable in damages, or at least he runs the risk of having his cargo rejected, or the freight retained.

It is quite usual to state, in the charter-party or bill of lading, a time after delivery of the goods or cargo at which payment of the freight is to be made, or that bills are to be granted first, and, in such cases, the captain has no right to retain the goods or cargo till the freight is paid,—such a bargain as to the *time* of payment being held to be a relinquishment of the right of retention; but where there has been no bargain as to the *time* of paying the freight, the captain is not bound to part with possession of the goods or cargo until that freight for such goods or cargo is paid, as freight is the hire or reward to be paid for the safe carriage of goods or cargo, and is generally payable on their being safely carried and ready for

[1] Shee's Abbot, 10th ed. 98, 99. [2] Ibid. 91.

delivery at the appointed place of delivery. But unless the right has been excluded by the agreement of the parties, the captain has a right to retain the goods or cargo for the full amount of the freight for the carriage, and he cannot be compelled to part with the goods or cargo till that freight is paid;[1] and this right, being an undivided right over the whole goods or cargo belonging to the charterer, or to the same person, is not lost or relinquished by allowing part of the goods to be taken away on payment of a portion only of the freight.[2] There is, however, no obligation upon the captain, as against the person primarily liable for the freight, to insist on the lien; he may, therefore, deliver the goods without prejudice to an action to recover the freight.

And though the charterer of the ship, who is also owner and shipper of the goods, sends over to his agents, who have notice of the charter-party, a bill of lading of the goods at a rate of freight less than the charter-party freight, these agents are, nevertheless, liable for the charter-party freight, and the right of retention can be exercised as against them.[4] If, however, the endorser of the bill of lading has, before the arrival of the vessel and delivery of the cargo, endorsed the same over to a third person, the rights and liabilities of consignee or endorser pass by the endorsement, in terms of section 1 of the Bills of Lading Act (18 and 19 Vict., cap. 111), from him to that third person, and he does not remain liable for the freight of the goods.[5] In such like cases, and when the freight is payable at the same time with delivery of the cargo, as this delivery cannot be made all at once, it is the duty of the captain to exact payment of the freight for the parts of the cargo, as such is placed ready for delivery, and while it is subject to his right of retention. As by charter-party freight was payable for the hire and use of a ship for a voyage out to Calcutta and home, part in advance on the ship's clearing outwards, and the rest, half in cash and half in approved bills, on delivery of the homeward cargo, and the ship was consigned to a mercantile house in Calcutta, who, for the homeward voyage, put her up as a general ship; several merchants shipped goods by her, for the freight of which freight bills were taken, payable eighty days after delivery, and bills of lading were signed, "paying freight agreeable to freight bill," and these freight bills were made payable in London, to a firm to whom the charterer was indebted for advances on the outward cargo, and who, as well as the Calcutta house, were in the knowledge of the terms of the charter-party:—it was held, that the owner of the ship had a right of retention on these goods to the extent of the homeward freight.[6] And, in the same case, the Calcutta house shipped goods which they had purchased for the charterer, and which, by the bill of lading, were consigned to their sender's agents, the said firm to whom the charterer was indebted:—it was held, that, as between the owner of the ship and the London firm, these goods were to be considered as the goods of the charterer, and were subject to the shipowner's right of retention for the freight due by the charter-party. In another case, goods were shipped by a company from Glasgow to Lima, under a bill of lading stating that freight was to be paid by the *shippers*,

[1] Kirchner *v.* Venus, 5 Jur. *n. s.* 395. [2] Perez *v.* Alsop, 3 F. and F. 188.
[3] Shephard *v.* De Bernales, 13 East, 565; Domett *v.* Beckford, 5 B. and Ad. 521.
[4] Keir *v.* Deslandes, 8 Jur. *n. s.* 194. [5] Smurthwaite *v.* Wilkins, 11 Scott, *n. s.* 842.
[6] Faith *v.* E. I. Coy., 4 B. and A. 630.

one month after sailing, ship lost or not lost; and the goods were consigned by them to a party for sale, to whom they handed the bill of lading for value; but the shippers failed in paying the freight, and the captain, by instructions from his owners, refused to deliver the goods to the agents at Lima for the consignee and endorsee of the bill of lading, without payment of the freight, for which he retained the goods:—it was held, that the shipowner had a right to retain the goods for the freight payable by the bill of lading as against the consignee and endorsee.[1] In a case, however, where a captain and part-owner of a ship signed bills of lading for a cargo from St. John's, Newfoundland, to Bilboa, making the cargo deliverable to the consigner and his assignees, he or they paying freight for the same, and the captain delivered the cargo to the consignees at Bilboa, and took their bill for the freight, which was dishonoured, and then action for the freight was brought against the consigner—but the jury were directed to find for the consigner, if they were of opinion that the captain took the bill voluntarily and for his own convenience, and that the consigner was not bound to prove that an offer was made to pay in cash.[2]

When delivery of the cargo or goods is not taken, and the freight and charges paid or settled, in terms of the charter-party or bills of lading, during the running of the stated lay-days, before these days expire, and *whether* any number of days have or have not been allowed as demurrage days, the captain should intimate, by form of protest, to the parties concerned, that the delivery of cargo has not been taken, or that part delivery only has been taken (as the case may be), that the lay-days, stated or customary, end on a certain day, and that then the ship will be on demurrage for the number of days agreed on, at the stipulated rate per day, or that the ship will remain (if no demurrage days have been stated) for a specified number of days after the lay-days, at a certain sum for each day,—but that if, during these periods, delivery be not taken, the cargo, or remaining cargo, will be landed in the captain's name, to secure duties, freight, and charges;—and in this country, when the cargo or goods are liable to customs duties, the captain can enter them in his own name, and deposit them in the Queen's warehouse, or other authorised place, for security of the duties, freight, and charges, and he can then apply, by a law agent, to the judge ordinary, or other proper legal authority of the place, for warrant to sell the cargo or goods so deposited, in payment of the duties, freight, charges, and expenses. By section 2 of 22 and 23 Vict., cap. 37, it is enacted, that "any officer of the customs having the charge or custody of any goods, which shall have come to his hands under the law relating to the customs, is authorised and empowered to refuse delivery thereof from the Queen's warehouse, or other place where the same shall be deposited, until proof shall be given to his satisfaction *that the freight due upon such goods has been paid.*"

But there is no such right of retention for the port charges, of which the freighter had agreed, but failed, to pay two-thirds;[3] nor for a sum due as demurrage;[4] nor for a sum payable as *dead freight;* and the right of lien, or retention, or detention over the cargo or goods, is very frequently waived or superseded by the agreement of the parties, making the

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[1] Neish *v.* Graham, 8 E. and B. 505.
[2] Strong *v.* Hart, 6 B. and C. 160.
[3] Faith, *ut sup.*
[4] Birley *v.* Gladstone, 3 M. and S. 205.

freight payable, say, so much in cash, and the residue by bills, or the whole by bills to fall due *after* delivery. For where the parties, instead of trusting to the general rule of law with respect to freight, make a special contract for the payment of freight, it must depend upon the terms of this contract whether a lien does or does not exist; and where this contract gives no lien, a court will not supply an implied or understood lien.[1] Thus, where a house in Liverpool shipped goods to Sydney, and took the bill of lading to the shipper's order or assigns, "he or they paying freight for the goods *here* as per margin," and on the margin were the following words:—"Freight payable in Liverpool to M., one month after sailing, lost or not lost;" and this bill of lading was endorsed for value;—when the ship arrived in Sydney, the captain was advised by his owner that the sum agreed to be paid as freight in Liverpool had not been paid, and therefore the captain refused to deliver the goods at Sydney to the endorsees of the bill of lading unless freight was paid, and held the goods for the unpaid freight: but it was held:—(1.) that the amount payable by the shippers at the port of shipment one month after sailing was merely money to be paid for taking the goods on board and undertaking to carry, and not for carrying the goods, and that there was no lien on the goods in respect of that sum being unpaid: and (2.) that as the bill of lading made the freight payable to a third party, M., and not to the shipowner, payment of freight to the captain or shipowner would be no answer to an action by M., in name of the shipowner, for non-payment of freight.[2] So also, where it was agreed by charter-party that the ship should load a cargo at Bombay, and proceed therewith to London, and discharge in any dock the freighter might appoint to deliver her cargo, "on being paid freight at and after the rate of £4 per ton," which was to be paid on right delivery of the cargo, and in cash, two months after the vessel's inward report at the custom-house:—it was held, that, taking these clauses together, the freight was not payable until two months after this inward report, and that after the cargo had been discharged in terms of the charter-party, the shipowner had not any lien thereon for the freight.[3] And in another case, the shipowner had a lien on the goods until the delivery of *good and approved bills* for his freight; and in payment he took a bill which, though objected to at the time, he afterwards negotiated:—it was held, that this negotiation of it amounted to an approval of the bill by him, and that this was an abandonment of his lien on the goods.[4] But when freight is made payable by bills, or good bills, or approved bills, the shipowner or captain can use this lien or retention on the cargo or goods, until such bills are actually delivered.[5]

It is clear, then, that a shipowner or captain has a lien or power of detention on the goods for freight,—*i.e.*, for the carriage, conveyance, and delivery of the goods, and that this lien attaches to each portion for the freight of the whole; the delivery and the payment being the conjoined acts of the captain and of the consignee. But this lien or power of detention is superseded, or rather cannot be exercised, when the parties have agreed upon the times of payment of that freight, quite inconsistent with such lien.

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[1] Kerford *v.* Mondel, 28 L. T. 303. [2] Kirchner *v.* Venus, 12 Moore, P. C. C. 361.
[3] Alsager *v.* St. Katherine's Dock Coy., 14 M. and W. 794.
[4] Horncastle *v.* Farran, 3 B. and A. 497. [5] Alsager, *ut sup.*

Thus, for instance, goods were shipped, and the bill of lading bore "Freight for the same goods to be paid by the shippers," and on the margin, "Freight payable one month after sailing, ship lost or not lost;" and on arrival at the port of destination the captain claimed a lien on the goods for the freight, and refused to deliver them to the consignees until freight had been paid:—but it was held, that he had no lien on the goods consigned, as the sum claimed was not freight, properly so called, as the contract stipulated for a payment in place of freight, at a fixed period, having no reference to the delivery of the goods.[1]

See the subsequent chapters on BILLS OF LADING AND FREIGHT.

As has been previously said (*ante* Chap. V.), a captain may or may not be a part-owner of the vessel he commands, and no statutory forms have to be observed either as to his appointment, his agreement with the owners, his duties, his wages, or his discharge; so that, though the seamen enter into the prescribed form of agreement *with him*, no such form is prescribed for the agreement between him and his owners. This is, therefore, left to the private arrangement of the parties themselves; but by section 191 of the Merchant Shipping Act it is enacted, that "every master of a ship shall have, so far as the case permits, the same rights, liens, and remedies, *for the recovery of his wages*, which, by this Act, or by any law or custom, any seamen, not being a master, has for recovery of his wages; and if, in any proceeding in any Court of Admiralty or Vice-Admiralty, touching the claim of a master to wages, any right of set-off" (compensation) "or counter-claim is set up, it shall be lawful for such court to enter into and adjudicate" (judge and decide) "upon all questions, and to settle all accounts then arising, or outstanding, and unsettled between the parties to the proceedings, and to direct payment of any balance that may be found due." And by section 183 it is declared, that "no right to *wages* shall be dependent on the earning of freight; and every seaman and apprentice who would be entitled to demand and recover any wages, if the ship in which he has served had earned freight, shall, subject to all other rules of law and conditions applicable to the case, be entitled to claim and recover the same, notwithstanding freight has not been earned."

These enactments will be considered more fully afterwards; but it has been held, that a captain has, in all respects, the same privileges as a common seaman, in an action for wages under the Merchant Shipping Act.[2] The rule that wages depend on the earning of freight does not apply to the wages of the captain of a ship;[3] and the captain must bring his claim for the whole amount of wages due, and cannot, in the first instance, go into any accounting between himself and his owners; and the owners may either pay the wages claimed, or go into the whole accounting between themselves and their captain.[4] If the captain's wages are, without cause, refused or neglected to be paid at the proper time, he is entitled, in terms of section 187, to two days' pay for each of the days (not exceeding ten days) during which payment of his wages is improperly withheld; but he is not so entitled if he himself causes the delay, by improperly keeping back the ship's accounts. As when an owner refused to pay the wages of the captain for a voyage unless credited with salvage money the captain

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1 Walker *v.* Kirchner, 11 Moore, P. C. C. 21.
2 *The Olive*, 1 Swabey, 292.
3 Hawkins *v.* Twizell, 5 El. and Bl. 883.
4 *The Caledonian*, 1 Swabey, 1717.

had received under an award, and kept by him for his own use, he having refused to account for a subsequent voyage, unless on getting a settlement for the former voyage without reference to the salvage money :—it was held, that payment of the wages was improperly withheld, and that the captain was entitled to ten days' double pay.[1] When the ship and all hands are lost, the captain's representative can recover wages for the period of his service before the loss ;[2] and when a captain is compelled by the pressing necessity of ill health to leave his ship abroad, he is entitled immediately to pursue for wages ;[3]—so also, if he is wrongfully discharged abroad, he is entitled to wages until he can obtain other employment, or until the termination of the entire voyage for which he had been originally engaged.[4] And if the owners or mortgagees in possession claim to deduct from the wages advances alleged to have been made to the captain, without going into an accounting to show they were entitled to do so by way of set-off or counter-claim :—it has been held, that, by section 191 before quoted, they are precluded from doing so.[5]

By this section, the captain has the same right of lien, or detention, or retention on the vessel for his wages as a seaman has,—and, to use the words of Lord Stowell, with reference to seamen's wages—"A seaman has right to cling to the last plank of his ship in satisfaction of his wages or part of them."[6] By process in the Admiralty Court, the ship can be brought to sale for payment of the wages due to the captain and mariners, without regard to the solvency or insolvency of the owner,[7] and on the proceeds of the ship so sold, the claim for the wages of the captain and seamen is preferred to bonds of bottomry,[8] though granted by the captain over the ship, cargo, and freight ;[9] unless when the captain is sole owner, and has granted a bond of bottomry, in which he binds himself personally, as well as the ship and freight, in which case he cannot claim his wages in preference to the bondholders.[10] But, generally he can claim both for the wages earned before and the wages earned after the date of such bonds ;[11] and if the ship has had the benefit of salvage, the wages of the captain and seamen rank next after the salvers, and in preference the after-claim of a shipwright for the wages earned before the ship came into his hands.[12]

If the owner disputes the amount due the captain, he is bound to show that it is improper.[13] But neither an error in judgment nor of seamanship on his part, nor his neglect to communicate a stranding of the vessel to an agent of Lloyd's, nor his neglect to sign a bottomry bond, bring on a forfeiture of wages ; though constant drunkenness in a captain, and the consequent non-performance or mal-performance of his duties, imputed to intoxication, but not occasional intoxication, will work a forfeiture of his wages.[14]

A captain has, at common law, no lien upon the ship either for his

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1 *The Princess Helena*, 4 L. T. *n. s.* 869.
2 Hawkins, *ut supra*.
3 *The Rajah of Cochin*, 1 Swabey, 473.
4 *The Camilla*, 1 Swabey, 312.
5 *The Caledonia*, 2 Jur. *n. s.* 48.
6 In *The Neptune*, Clark, 1 Hag. 227.
7 *The Arab*, 5 Jur. *n. s.* 417.
8 *The William F. Safford*, 1 Lush. 69.
9 *The Salacia*, 11 W. R. 189.
10 *The William*, 1 Swabey, 346.
11 *The Union*, 1 Lushington, 128.
12 *The Gustaf*, 6 L. T. *n. s.* 660.
13 *The Rajah of Cochin, ut sup.*
14 *The Camilla, ut sup. : The Atalanta*, 11 W. R. 188.

wages or for money which he may have necessarily expended for repairs or furniture of the ship. But, as pointed out above, the Merchant Shipping Act expressly placed him, in respect of wages, in the same position as ordinary seamen, who always had a lien on the ship. And now by 24 Vict., cap. 10, sec. 10, the Admiralty Court has jurisdiction "over any claim by the master of any ship . . . . for *disbursements* made by him on account of the ship." This provision has been construed as giving the master a maritime lien for his disbursements (as well as for his wages).[1] And this lien probably extends not only to payments actually made, but to mere liabilities incurred by the master, and would seem to affect not only the ship but the freight.[2]

It is a general rule, that a trustee cannot make a profit for himself by the use of the trust property,—so the same rule applies to a captain intrusted with a ship, for the purpose of using it for the owner's benefit. As in the case of a captain authorised to employ his ship on freight to the best advantage, but not to purchase a cargo on the owner's account, and, not being able to procure a profitable freight, he loaded the ship with a cargo of his own:—but it was held, that he was liable to account to his owners for all profits made by the sale of the cargo, and not merely for a proper freight.[3] It follows, however, that the owners cannot take such benefit without also bearing its burdens,—and, therefore, when a captain entered into a charter-party to convey Government troops, for which purpose he fitted up the vessel, and, in doing so, he advanced money out of his own pocket, and drew on his owner for the rest of the expense; and he himself was, by the charter-party, adopted by his owner to receive the freight:—in an action against him for the freight, he is entitled to deduct the money he so advanced.[4]

No form is prescribed by the Merchant Shipping Act or any of its amendments, or by the Board of Trade, or Commissioners of Customs, for the discharge of the captain of a ship, on the termination of his engagement; but there can be no doubt that he, the same as any other servant, is entitled to demand a *written character* from his owners, and, in that character, if granted, nothing but what is true must be stated; and as to the power of the owners summarily to dismiss the captain, it may be proper here to quote the opinion of that late very eminent and learned judge, Lord Stowell:—"All that the court requires, in cases where the master is not part-owner, is, that the majority of the owners should declare their disinclination to continue him in possession. In the case of a master and *part-owner*, something more is required before the court will proceed to dispossess a person who is also a proprietor of the vessel, and whose possession, therefore, the common law is, upon general principles, inclined to maintain. It is not, however, by any means unprecedented for the court to proceed even to that extent; but, then, some special reason is commonly stated to induce the court to interpose. I observe there is a reason given in this case, and the same that most frequently occurs, 'that the master is irregular in his accounts with his owners.' The interests on behalf of which the suit is stated to be brought, are 9–16ths of the whole property,

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1 *The Mary Ann*, L. R. 1 Adm. 8; *The Feronia*, L. R. 2 Adm. 65.
2 Ibid.
3 Shatteresso *v.* Oldham, 10 W. R. 291.
4 Bristow *v.* Whitmore, 9 W. R. 621.

a great preponderance, undoubtedly, but such as, great or small, is sufficient to warrant a proceeding of this nature."[1] If the captain be dismissed unduly, or unjustly, or wrongfully, he has his claim of damages against the owners for so doing.[2]

VI.—REGISTRATION AND RETURNS RESPECTING SEAMEN.

By section 271 of the Merchant Shipping Act it is enacted, that there shall be in the Port of London an office called the "General Register and Record Office of Seamen," and the Board of Trade has control over the same, and can appoint, and from time to time remove, a registrar-general, and such assistants, clerks, and servants as may be necessary, and from time to time, with consent of the Treasury, can regulate their salaries and allowances; and these salaries and allowances, and all other necessary expenses, are to be paid by the Treasury out of moneys to be granted by Parliament for that purpose. The Board of Trade can direct the business of the register-office, at any of the out-ports, to be transacted at the now Mercantile Marine Office, or, with consent of the Commissioners of Customs, at the custom-house of the port, and can appoint as the superintendent, with such consent as aforesaid, some officer of customs, to conduct the same; and such business must, thereupon, be conducted accordingly, but is, in all cases, subject to the immediate control of the Board of Trade. The Registrar-General of Seamen must, by means of the agreements, lists, and other papers to be transmitted to him, as directed by the Act, or by such other means as are in his power, keep a register of all persons who serve in ships, subject to the provisions of the Merchant Shipping Act.[3]

The captain of every foreign-going ship, of which the crew is discharged in the United Kingdom, in whatever part of Her Majesty's dominions the same is registered, and of every home-trade ship, must make out and sign a list, in the forms C and D, as sanctioned by the Board of Trade, containing the following particulars:—

1. The number and date of the ship's register, and her registered tonnage.

2. The length and general nature of the voyage or employment.

3. The Christian names, surnames, ages, and places of birth of all the crew, including the master and apprentices; their qualities on board; their last ships or other employments; and the dates and places of their joining the ship.

4. The names of any members of the crew who have died, or otherwise ceased to belong to the ship, with the times, places, causes, and circumstances thereof.

5. The names of any members of the crew who have been maimed or hurt, with the times, places, causes, and circumstances thereof.

6. The wages due to any of the crew who have died at the times of their respective deaths.

7. The clothes and other effects belonging to any of the crew who have

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[1] *The New Draper*, 4 Rob. 290.

[2] See "Valin Commentaire sur l'Ordonnance de la Marine," liv. ii. tit. viii. sec. 4; Becane's ed., Poitiers, 1828, pp. 149, 550.

[3] Secs. 271, 272; 25 and 26 Vict., cap. 63, sec. 15.

died, with a statement of the manner in which they have been dealt with, and the money for which any of them have been sold.

8. Every marriage which takes place on board, with the date thereof, and the names and ages of the parties.[1]

As to the return of births and deaths, see the Births and Deaths Registration Act, 1874, 37 and 38 Vict., cap. 88, sec. 54, cited *ante*, p. 67.

In the case of foreign-going ships, the master must, within forty-eight hours after the ship's arrival at her final port of destination in the United Kingdom, or upon the discharge of the crew, whichever first happens, deliver to the superintendent before whom the crew is discharged, the list as before required, and, if he fails to do so, he, for every default, incurs a penalty not exceeding £5; and, thereupon, the superintendent gives the master a certificate of such delivery. And no officer of customs must clear inwards any foreign-going ship without production of this certificate, and any such officer may detain the ship until the same is produced.[2]

The captain or owner of every home-trade ship must, within twenty-one days after the 30th June and 31st December in every year, transmit or deliver to some superintendent in the United Kingdom, such list as is before required, for the preceding half-year, and, in default, he incurs a penalty not exceeding £5; and the superintendent gives to the captain or owner a certificate of such transmission or delivery. And no officer of customs must grant a clearance or transire for any home-trade ship without the production of such certificate, and any customs officer can detain any such ship until the same is produced.[3]

If any ship ceases, by a transfer of ownership or change of employment, to fall within the definition of a foreign-going or of a home-trade ship, the master or owner thereof must,—if the ship is then in the United Kingdom, —within one month, and if she is elsewhere, within six months, deliver or transmit to the superintendent at the port to which the ship had belonged, a list as before mentioned, duly made out to the time at which she ceased to be a foreign-going or home-trade ship, and, in default, the master or owner, for each offence, incurs a penalty not exceeding £10. And if any ship is lost or abandoned, the captain or owner must, if practicable, and as soon as possible, deliver or transmit to the superintendent at the port to which the ship belonged, the list before mentioned, duly made out to the time of such loss or abandonment; and, in default, the master or owner incurs, for each offence, a penalty not exceeding £10.[4]

All superintendents and officers of customs have to take charge of all documents which are delivered or transmitted to or retained by them, in pursuance of the Merchant Shipping Act, and must keep them for such time (if any) as may be necessary for the purpose of settling any business arising at the place where such documents come into their hands, or for any other purpose, and must, if required, produce them for any of such purposes, and must then transmit them to the Registrar-General of Seamen, to be by him recorded and preserved; and on payment of a moderate fee, to be fixed by the Board of Trade, or without payment of any fee, if the Board of Trade so directs, the registrar must allow any person to inspect such documents; and in cases in which the production of the original of any such document, in any court of justice or elsewhere, is

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[1] 17 and 18 Vict., cap. 104, sec. 273. [2] Sec. 274. [3] Sec. 275. [4] Sec. 276.

essential, he must produce the same, and in other cases, he must make and deliver to any person requiring it a certified copy of any such document, or of any part thereof; and every copy, purporting to be so made and certified, is to be received in evidence, and has all the effect of the original, of which it purports to be a copy.[1]

VII.—APPRENTICESHIPS AND ENGAGEMENT OF SEAMEN.

The superintendents, if applied to for the purpose, are required to give to any board of guardians, overseers, or other persons desirous of apprenticing boys to the sea-service, and to masters and owners of ships requiring apprentices, such assistance as is in their power for facilitating the making of such apprenticeships, and they may receive from persons availing themselves of such assistance such fees as may be determined in that behalf by the Board of Trade, with the concurrence, so far as relates to pauper apprentices in England, of the Poor-Law Board in England, and so far as relates to pauper apprentices in Ireland, of the Poor-Law Commissioners in Ireland.[2]

In the case of boys bound apprentices to the sea-service by guardians or overseers of the poor, or other person having the authority of guardian of the poor, the indentures must be subscribed by the boy and the person to whom he is bound, in presence of, and be attested by, two justices of the peace, who must ascertain that the boy has consented to be bound, and has attained the age of twelve years, and is of sufficient health and strength, and that the master to whom the boy is to be bound is a proper person for the purpose.[3]

All indentures to the sea-service are free from stamp duty, and must be in duplicate; and every person to whom any boy is bound as an apprentice to the sea-service in the United Kingdom, must take or transmit the indentures, within seven days after the subscribing of the same, to the Registrar-General of Seamen, or to some superintendent, and the registrar or superintendent retains and records one copy, and endorses on the other that the same has been recorded, and he re-delivers the same to the master of the apprentice. Whenever any such indenture is assigned or cancelled (put an end to), and whenever an apprentice dies or deserts, the master of the apprentice must,—within seven days after such assignment, cancellation, death, or desertion,—if the same happen within the United Kingdom, or, if the same happen elsewhere, so soon afterwards as circumstances permit, notify the same to the registrar of seamen, or to some superintendent, to be recorded; and every person who fails to comply with these provisions incurs a penalty not exceeding £10.[4]

Under these foregoing terms, all apprenticeships to the sea-service, if made in Great Britain by guardians or overseers of the poor, or by persons having the authority of such, are required to be made in the same manner, and are under the same laws and regulations, as other apprenticeships made by them; and if made in Ireland, these apprenticeships require to be made in the manner and in the terms here specified.[5] And before carrying an apprentice to sea, from any place in the United Kingdom, the captain of every *foreign-going ship* must make each apprentice appear

[1] Sec. 277. [2] Sec. 141. [3] Sec. 142. [4] Sec. 143. [5] Sec. 144.

before the superintendent before whom the crew is engaged, and must produce the indenture by which he is bound, and any assignment or assignments of it; and the name of the apprentice, with the date of the indenture, and of the assignments (if any), and the name of the port or ports at which the same have been registered, are entered in the appropriate place of the agreement. And, for any failure or omission in obeying these requirements, the captain, for each offence, incurs a penalty not exceeding £5.[1]

It has been held that an apprentice is entitled, out of the proceeds of the ship (when sold) in which he has served, to his wages due under a general apprenticeship to the owner, but not so to recover the penalty in the indenture for breach of the agreement.[2]

The Board of Trade can grant to such persons as it thinks fit, licences to engage or supply seamen or apprentices for merchant ships in the United Kingdom,—such licences to continue for such periods, to be upon such terms, and to be revocable upon such conditions, as the Board thinks proper.[3]

In reference to these licences, the following are made offences, punishable as after mentioned:—

1. If any person, not licensed, other than the owner, or master, or a mate of a ship, or some person who is *bona fide* the servant of, and in the constant employment of, the owner, or a superintendent duly appointed, engages or supplies any seaman or apprentice, to be entered on board any ship in the United Kingdom,—he, for each seaman or apprentice so engaged or supplied, incurs a penalty not exceeding £20.

2. If any person employs an unlicensed person, other than persons so excepted as aforesaid, for the purpose of engaging or supplying any seaman or apprentice to be entered on board any ship in the United Kingdom,—he, for each seaman or apprentice so engaged or supplied, incurs a penalty not exceeding £20,—and if licensed, he in addition forfeits his licence.

3. If any person knowingly receives or accepts, to be entered on board any ship, any seaman or apprentice who has been engaged or supplied contrary to the provisions of the Act,—he, for every seaman or apprentice so engaged or supplied, incurs a penalty not exceeding £10.[4]

And if any person demands or receives, either directly or indirectly, from any seaman or apprentice, or from any person seeking employment as a seaman or apprentice, or from any person on his behalf, any remuneration whatever, for providing him with employment, other than the fees authorised by the Act,—he, for every offence, incurs a penalty not exceeding £5.[5]

In every contract of service, express or implied, between the owner of a ship and the master or any seaman thereof, and in every instrument of apprenticeship whereby any person is bound to serve as an apprentice on board any ship, there is implied, notwithstanding any agreement to the contrary, an obligation on the owner of the ship, that the owner of the ship, and the master, and every agent charged with the loading of the ship, or the preparing thereof for sea, or the sending thereof to sea, shall use all reasonable means to ensure the seaworthiness of the ship for the voyage at the time the voyage commences, and to keep her in a seaworthy condition

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[1] Sec. 145.
[2] *The Albert Crosby*, 1 Lushington, 44.
[3] Sec. 146.
[4] Sec. 147.
[5] Sec. 148.

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for the voyage during the same. But the owner of a ship is not subject to any liability by reason of the ship being sent to sea in an unseaworthy state, where, owing to special circumstances, the so sending thereof to sea is reasonable and justifiable (39 and 40 Vict., cap. 80, sec. 5).

The captain of every ship,—except ships of less than eighty tons registered tonnage, and exclusively employed in trading between different ports on the coasts of the United Kingdom,—must enter into an agreement with every seaman whom he carries to sea, from any port of the United Kingdom, as one of his crew, in the manner after stated; and every such agreement must be in the form A or B, sanctioned by the Board of Trade, —and must be dated at the time of the first signature thereof,—and must be signed by the captain before any seaman signs the same,—and must contain the following particulars as terms thereof:—

1. The nature, and, as far as practicable, the duration of the intended voyage or engagement.
2. The number and description of the crew, specifying how many are engaged as sailors.
3. The time at which each seaman is to be on board or to begin work.
4. The capacity in which each seaman is to serve.
5. The amount of wages which each seaman is to receive.
6. A scale of the provisions which are to be furnished to each seaman.
7. Any regulations as to conduct on board, and as to fines, short allowance of provisions, or other lawful punishments for misconduct, which have been sanctioned by the Board of Trade, as regulations proper to be adopted, and which the parties agree to adopt.

And every such agreement must be so framed as to admit of stipulations to be adopted at the will of the master and seamen, in each case, as to advance and allotment of wages, and may contain any other stipulations which are not contrary to law;—but if the captain of any ship belonging to any British possession has an agreement with his crew, made in due form, according to the law of the possession to which such ship belongs, or in which her crew was engaged,—and engages single seamen in the United Kingdom,—such seamen may sign the agreement so made, and it is not then necessary for them to sign an agreement in the form sanctioned by the Board of Trade.[1] The agreement may, instead of stating the nature and duration of the intended voyage, state the maximum period of the voyage or engagement, and the places or parts of the world (if any) to which the voyage or engagement is to extend (Merchant Shipping Act, 1873, 36 and 37 Vict., cap. 85, sec. 7).

In the case of all *foreign-going ships*, in whatever part of Her Majesty's dominions the same are registered, the following rules must be observed with respect to agreements:—

1. Every agreement made in the United Kingdom (except in such cases of agreements with substitutes as after specially provided for) must be signed by each seaman in presence of a superintendent.
2. And he must cause the agreement to be read over and explained to *each seaman*, or otherwise ascertain that *each seaman* understands the same before he signs it, and he attests *each signature*.
3. When the crew is first engaged, the agreement must be signed in

[1] Sec. 149.

duplicate, and one part is to be retained by the superintendent, and the other part must contain a special place or form for the descriptions and signatures of substitutes, or persons engaged subsequently to the first departure of the ship, and must be delivered to the captain.

4. In the case of substitutes engaged in the place of seamen, who have duly signed the agreement, and whose services are lost, within twenty-four hours of the ship's putting to sea, by death, desertion, or other unforeseen cause, the engagement must, when practicable, be made before some duly appointed superintendent; and whenever such last-mentioned engagement cannot be so made, the captain must, before the ship proceed to sea, if practicable, and. if not, as soon afterwards as possible, cause the agreement to be read over and explained to the seamen; and the seamen must, thereupon, sign the same in presence of a witness, who attests their signatures.[1]

These articles form an agreement between the owner or captain and *each* of the crew for himself.[2]

In foreign-going ships, making voyages averaging less than six months in duration, running agreements with the crew may be made,—to extend over two or more voyages,—so that no such agreement extend beyond the next following 30th of June or 31st of December,—or the first arrival of the ship at her port of destination in the United Kingdom after such date,—or the discharge of cargo consequent upon such arrival; and every person entering into such agreement,—whether engaged upon the first commencement thereof or otherwise,—must enter into and sign the same in the manner before required for other foreign-going ships. And every person engaged in this manner, if discharged in the United Kingdom, must be discharged in the manner required for the discharge of seamen belonging to other foreign-going ships.[3]

The captain of every foreign-going ship, for which such a running agreement is made, must, upon every return to any port in the United Kingdom, before the final termination of the agreement, discharge or engage, defore the superintendent at that port, any seaman whom he is required by law so to discharge or engage,—and he must, upon every such return, endorse on the agreement a statement (as the case may be), either that no such discharges or engagements have been made, or are intended to be made, before the ship again leaves port,—or, that all such discharges or engagements have been duly made, as required by the Merchant Shipping Act,—and he must deliver the agreement so endorsed to the superintendent; and any captain who wrongfully makes a false statement in such endorsement, incurs a penalty not exceeding £20. And the superintendent also signs an endorsement on the agreement,—to the effect, that the provisions of the Merchant Shipping Act relating to such agreement have been complied with; and he re-delivers the agreement so endorsed to the captain.[4]

In cases in which these running agreements are made, the duplicate agreement retained by the superintendent, upon the first engagement of the crew, must either be transmitted to the Registrar-General of Seamen immediately, or be kept by the superintendent until the expiration of the agreement, as the Board of Trade directs.[5]

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[1] Sec. 150.
[2] Fraser *v.* Hutton, 3 Jur. *n. s.* 664.
[3] Sec. 151.
[4] Sec. 152.
[5] Sec. 153.

For the purpose of determining the fees to be paid upon the engagement and discharge of seamen belonging to foreign-going ships having such running agreements, the crew is considered to be engaged when the agreement is first signed, and to be discharged when the agreement finally terminates;—and all intermediate engagements and discharges are considered to be engagements and discharges of single seamen.[1]

In the case of *home-trade* ships, crews or single seamen may, if the captain thinks fit, be engaged before a superintendent, in the manner before directed with respect to foreign-going ships; and in every case in which the agreement is not so made, the captain must, before the ship puts to sea, if practicable, and if not, as soon afterwards as possible, cause the agreement to be read over and explained to each seaman, and, thereupon, the seaman must sign the same, in the presence of a witness, who attests his signature.[2]

In cases where several home-trade ships belong to the same owner, the agreement with the seamen may, notwithstanding anything contained in the Act, be made by the owner, instead of by the captain,—and the seamen may be engaged to serve in any two or more of such ships, provided that the names of the ships and the nature of the service are specified in the agreement; but, with the foregoing exception, all provisions contained in the Act, which relate to ordinary agreements for home-trade ships, are applicable to agreements made in pursuance of this section.[3]

If, in any case, a captain carries any seaman to sea, without entering into an agreement with him, in the form and manner, and at the place and time required by the Act, the captain, in the case of a foreign-going ship, and the captain or owner, in the case of a home-trade ship, for each such offence incurs a penalty not exceeding £5.[4]

The captain of every foreign-going ship, of which the crew has been engaged before a superintendent, must, before finally leaving the United Kingdom, sign and send to the superintendent a full and accurate statement, in the form as sanctioned by the Board of Trade, of every change which takes place in his crew, before finally leaving the United Kingdom, and, in default, he, for each offence, incurs a penalty not exceeding £5; and such statement is admissible in evidence, subject to all just exceptions.[5]

Every captain of a ship, who, if such ship is registered in the United Kingdom, engages any seaman in any British possession, or if such ship belongs to any British possession, engages any seaman in any British possession other than that to which the ship belongs, must,—if there is at the place where the seaman is engaged, any official superintendent, or other officer duly appointed for shipping seamen,—engage such seaman before such superintendent,—and if there is no such superintendent or officer, then before some officer of the customs; and the same rules, qualifications, and penalties, as are before specified with respect to the engagement of seamen before superintendents in the United Kingdom, apply to such engagements in a British possession. Upon every such engagement, the superintendent or officer aforesaid endorses upon the agreement an attestation to the effect that the same has been signed in his presence, and otherwise made as required by the Act;—and if, in any case, such attestation is not

[1] Sec. 154. [2] Sec. 155. [3] Sec. 156. [4] Sec. 157. [5] Sec. 158.

made, the burden of proving that the seaman was duly engaged as required by the Act lies upon the captain.[1]

Every captain of a British ship, who engages any seaman at any place out of Her Majesty's dominions, in which there is a British consular officer, must, before carrying such seaman to sea, procure the sanction of, and engage the seaman before, that officer; and the same rules as are before given with respect to the engagement of seamen before superintendents in the United Kingdom, apply to such engagements made before consular officers. Upon every such engagement, the consular officer endorses upon the agreement his sanction thereof, and an attestation to the effect that the same has been signed in his presence, and otherwise made as required by the Act; and every captain who engages any seaman, in any place in which there is a consular officer, otherwise than as before required, incurs a penalty not exceeding £20. If, in any case, the endorsement and attestation thus required is not made upon the agreement, the burden of proving the engagement to have been made as before required lies upon the captain.[2]

The following rules have to be observed with respect to the production of agreements and certificates of competency or service for *foreign-going* ships:—

1. The captain of every *foreign-going* ship must, on signing the agreement with his crew, produce to the superintendent before whom the same is signed the certificates of competency or service which he, the captain, and his first and second mates, or only mate (as the case may be), are required by the Act to possess, and upon such production being duly made, and the agreement being duly executed as required by the Act, the superintendent signs and gives to the captain a certificate to that effect.

2. In the case of *running* agreements for *foreign-going* ships, the superintendent, before the second and every subsequent voyage made after the first commencement of the agreement, signs and gives to the captain a certificate to that effect, on his complying with the aforesaid provisions with respect to such agreements, and producing to the superintendent the certificate of competency or service of any first, second, or only mate, then first engaged by him.

3. The captain of every *foreign-going* ship must, before proceeding to sea, produce this certificate, so to be given to him by the superintendent, to the collector or comptroller of customs, and no officer of customs must clear any ship outwards without this production;—and if any such ship attempts to go to sea without a clearance, any customs officer can detain her until this certificate is produced.

4. The captain of every *foreign-going* ship must, within forty-eight hours after the ship's arrival at her final port of destination in the United Kingdom, or upon the discharge of the crew,—whichever first happens,—deliver such agreement to a superintendent at the place; and, thereupon, the superintendent gives to the captain a certificate of such delivery. And no customs officer must clear any *foreign-going* ship inwards without the production of this certificate.

And if the captain of any *foreign-going* ship fails to deliver the agree-

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[1] Sec. 159. [2] Sec. 160.

ment to a superintendent, at the time and in the manner before directed, he, for every default, incurs a penalty not exceeding £5.[1]

The following rules must be observed with respect to the production of agreements and certificates of competency or service for *home-trade* ships:—

1. In *home-trade* ships of more than eighty tons burden, no agreement, save as hereinafter mentioned, must extend beyond the next following 30th of June or 31st of December, or the first arrival of the ship at her final port of destination in the United Kingdom after such date, or the discharge of cargo consequent upon such arrival.

2. The captain or owner of every such ship must, within twenty-one days after the 30th of June and the 31st of December in every year, transmit or deliver to some superintendent in the United Kingdom every agreement made within the six calendar months next preceding such days respectively, and must also, in the case of home-trade passenger ships, produce to the superintendent the certificates of competency or service which the captain himself, and his first or only mate (as the case may be), are by the Act required to possess.

3. The superintendent, thereupon, gives to the captain or owner a certificate of such delivery and production; and no officer of customs can grant a clearance or transire for any such ship as last mentioned without the production of this certificate. If any such ship attempts to ply or go to sea without such clearance or transire, any customs officer can detain her until this certificate is produced:—And if the agreement for any home-trade ship is not delivered or transmitted by the captain or owner to a superintendent, at the time and in the manner before directed, that captain or owner, for every default, incurs a penalty not exceeding £5.[2]

Now, however, the owner of home-trade ships, or his agent, may, by virtue of the Merchant Shipping Act, 1872, 35 and 36 Vict., cap. 73, sec. 16, enter into time agreements with individual seamen to serve in any one or more of his ships, which agreements need not expire on either the 30th of June or the 31st of December; but the agreements must be in a form to be sanctioned by the Board of Trade, and duplicates are to be forwarded to the Registrar-General of Shipping within forty-eight hours after being entered into.

Every erasure, interlineation, or alteration in any agreement with seamen, as is before required (except additions so made as before directed for shipping substitutes or persons engaged subsequently to the first departure of the ship), is wholly inoperative, unless proved to have been made with the consent of all the persons interested in such erasure, or interlineation, or alteration, by the written attestation (if made in Her Majesty's dominions) of some superintendent, justice, or officer of customs or other public functionary,—or (if made out of Her Majesty's dominions) of a British consular officer, or, where there is no such officer, of two respectable British merchants.[3]

Every person who fraudulently alters, assists in fraudulently altering, or procures to be fraudulently altered, or who makes, assists in making, or procures to be made, any false entry in, or who delivers, assists in delivering, or procures to be delivered, a false copy of any agreement, he, for each such offence, is deemed guilty of a misdemeanour.[4]

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[1] Sec. 161. [2] Sec. 162. [3] Sec. 163. [4] Sec. 164.

Any seaman can bring forward evidence to prove the contents of any agreement, or otherwise to support his case, without producing, or giving notice to produce, the agreement or any copy thereof.[1]

At the commencement of every voyage or engagement, the captain must cause a legible copy of the agreement (omitting the signatures) to be placed or posted up in such part of the ship as to be accessible to the crew, and in default, he, for each offence, incurs a penalty not exceeding £5.[2]

When a seaman has signed the agreement, and is afterwards discharged before the commencement of the voyage, or before one month's wages are earned, without fault on his part, justifying such discharge, and without his consent, he is entitled to receive from the captain or owner, in addition to any wages he may have earned, due compensation for the damage thereby caused to him, not exceeding one month's wages; and, on adducing such evidence, as the court hearing the case deems satisfactory, of his having been so improperly discharged, he can recover such compensation as if it were wages duly earned.[3]

The seaman's right to wages and provisions is taken to commence, either at the time at which he commences work, or at the time specified in the agreement for his commencement of work or presence on board, whichever first happens.[4] But no seaman or apprentice is entitled to wages for any period during which he unlawfully refuses or neglects to work when required, whether before or after the time fixed by the agreement for his beginning work; nor, unless the court hearing the case otherwise directs, for any period during which he is lawfully imprisoned for any offence committed by him.[5]

No seaman forfeits, by any agreement, his lien upon the ship, or is deprived of any remedy for the recovery of the wages to which he would otherwise have been entitled; and every stipulation in any agreement inconsistent with any provision in the Merchant Shipping Act, and every stipulation by which any seaman consents to abandon his right to wages in case of the loss of the ship, or to abandon any right which he may have or obtain in the nature of salvage, are wholly inoperative.[6] But this section of the principal Act does not apply to the case of any stipulation made by the seamen belonging to any ship which, according to the terms of the agreement, is to be employed on salvage service, with respect to the remuneration to be paid to them for salvage services to be rendered by such ship to any other ship or ships (Merchant Shipping Act Amendment Act, 1862, 25 and 26 Vict., cap. 63, sec. 18).

No right to wages is dependent on the earning of freight; and every seaman and apprentice who would be entitled to demand and recover any wages if the ship he had served in had earned freight, is entitled, subject to all other rules of law applicable to the case, to claim and recover the same, notwithstanding that freight has not been earned. But in all cases of wreck or loss of the ship, proof that he has *not* exerted himself to the utmost to save the ship, cargo, and stores, excludes his claim.[7]

If any seaman or apprentice, to whom wages are due under the immediately preceding enactment, dies before the same are paid, they must be paid and applied in the manner after specified, with regard to the wages

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[1] Sec. 165. [2] Sec. 166. [3] Sec. 167. [4] Sec. 181. [5] Sec. 186. [6] Sec. 182. [7] Sec. 183.

of seamen who die during a voyage.[1] And in cases where the service of any seaman terminates before the period contemplated in the agreement, by reason of the wreck or loss of the ship, and also in cases where his service terminates before that period, by reason of his being left on shore at any place abroad, under a certificate of his unfitness or inability to proceed on the voyage, granted as after mentioned, that seaman is entitled to wages for the time of service prior to such termination, but not for any further period.[2] When seamen are injured by an accident, and put on shore, and the ship proceeds on her voyage, the captain has no understood authority to make the owner liable for their care and maintenance.[3]

It is lawful for any master or owner of a ship, or his agent, to enter into contracts or agreements with Lascars or natives of the territories of the East India Company, binding them to proceed to any port or ports in the Australian colonies, or in the United Kingdom, either as seamen or passengers, and there to engage themselves to enter into a further agreement to serve as seamen in any ship which may happen to be there, and to be bound to the United Kingdom, or to any other part of Her Majesty's dominions, or to any port in the territories of the East India Company. But every such contract or original agreement must be in such form, must contain such provisions, be executed in such manner, and under such conditions for securing the return of these Lascars or natives to their own country, and for other purposes, as the Governor-General of India in Council, or as the Governors of the respective Presidencies in which the contract is made, in Council, may direct. And if any Lascar, or other person who has bound himself by any such contract or original agreement, is, on arriving in the United Kingdom, or in any of the said colonies, required to enter into an agreement to serve as a seaman in any ship bound for the United Kingdom, or any other part of Her Majesty's dominions, or to any port in the territories of the East India Company, and if it is certified by some officer appointed for that purpose by the East India Company, or by the Governor of such colony, that such agreement is a proper agreement in all respects for such Lascar or other person to enter into, and is in accordance with the original contract or agreement, and that the ship to which such agreement relates is a proper ship for such Lascar or other person to serve in, and is properly supplied with provisions, and that there is not, in the opinion of such officer, any objection to the full performance of that contract or agreement, such Lascar or other person is held to be engaged under this agreement, and to serve as a seaman in the ship to which it relates, and he is thereupon deemed to be, for all purposes, one of the crew of the ship.[4] And for every Lascar or other person for whom this certificate is applied for, the person applying pays to said officer such fee as the East India Company or the Governor of the colony may appoint, not exceeding ten shillings.[5]

VIII.—PROVISIONS, ETC., FOR CREW.

Any three or more of the crew of any British ship can complain to any officer in command of any of Her Majesty's ships, or any British consular officer, or any superintendent, or any chief officer of customs, that the pro-

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[1] Sec. 184. [2] Sec. 185. [3] Organ *v.* Brodie, 24 L. J. 70.
[4] Sec. 544; 18 and 19 Vict., cap. 91, sec. 23. [5] Ibid.

visions or water for the use of the crew are at any time of bad quality, unfit for use, or deficient in quantity; and such officer can, thereupon, examine the said provisions or water, or cause them to be examined; and if, on examination, such provisions or water are found to be of bad quality and unfit for use, or to be deficient in quantity, the person making such examination makes the same known in writing to the captain of the ship. If the captain does not, thereupon, provide other provisions or water, in lieu of any so signified to be of bad quality and unfit for use, or does not procure the requisite quantity of any so signified to be insufficient in quantity, or uses any provisions or water which have been so signified to be of a bad quality and unfit for use,—he, in every such case, incurs a penalty not exceeding £20. Upon every such examination as aforesaid, the officer making or directing the same must enter a statement of the result of his examination in the official log, and must send a report thereof to the Board of Trade; and such report, if produced out of the custody of the Board or its officers, is to be received in evidence in any legal proceeding.[1]

If the officer to whom such a complaint is made certifies in his said statement that there was no reasonable ground for the complaint, each of the parties so complaining is liable to forfeit to the owner out of his wage a sum not exceeding one week's wages.[2]

1. If, during a voyage, the allowance of any of the provisions, which any seaman has stipulated for by his agreement, is reduced (except in accordance with any regulations for reduction by way of punishment contained in the agreement,—and also except for any time during which any seaman wilfully, and without sufficient cause, refuses or neglects to perform his duty, or is lawfully under confinement for misconduct, either on board or on shore):

2. If it is shown that any of such provisions are, or have, during the voyage, been bad in quality and unfit for use:

In such cases, the seaman must receive, by way of compensation for such reduction or bad quality, according to the time of its continuance, the following sums, to be paid to him in addition to, and to be recoverable as wages:—

1. If his allowance is reduced by any quantity not exceeding one-third of the quantity specified in the agreement—a sum not exceeding fourpence a day.

2. If his allowance is reduced by more than one-third of such quantity —eightpence a day.

3. In respect of such bad quality as aforesaid—a sum not exceeding one shilling a day.[3] And when, owing to the unexpected length of the voyage, the crew have been put on short allowance, they will be entitled to compensation under this section.[4] But if it be shown that any provisions, the allowance of which has been reduced, could not be procured or supplied in proper quantities, but that proper and equivalent substitutes have been supplied, the court can take this into consideration, and modify or refuse compensation, as the case may require.[5]

The following rules must be observed with respect to medicines, medical stores, and anti-scorbutics (*i.e.*, medicines operating against scurvy):—

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[1] Sec. 221. [2] Sec. 222. [3] Sec. 223.
[4] *The Josephine*, 2 Jur. *n. s.* 1148. [5] Sec. 223.

1. The Board of Trade from time to time issue and cause to be published scales of medicines and medical stores suitable for different ships and voyages, and also prepare or sanction a book or books containing instructions for dispensing the same.

2. The owners of every ship navigating between the United Kingdom and any place out of the same must provide and cause to be kept on board such ship a supply of medicines and medical stores in accordance with the scale appropriate to the said ship, and also a copy of the said book or of one of the said books containing instructions.

3. No lime or lemon juice will be deemed fit and proper to be taken on board any such ship, for the use of the crew or passengers thereof, unless the same has been obtained from a bonded warehouse for and to be shipped as stores; and no lime or lemon juice can be so obtained or delivered from any warehouse as aforesaid unless the same is shown, by a certificate under the hand of an inspector appointed by the Board of Trade, to be proper for use on board ship, such certificate to be given upon inspection of a sample after deposit of the said lime or lemon juice in the warehouse; nor unless the same contains fifteen per centum of proper and palatable proof spirits, to be approved by such inspector, or by the proper officer of customs, and to be added before or immediately after the inspection thereof; nor unless the same is packed in such bottles, at such time and in such manner, and is labelled in such manner, as the Commissioners of Customs may direct; but when any such lime or lemon juice is deposited in any bonded warehouse, and has been approved as aforesaid by the said inspector, the said spirits, or so much of the said spirits as is necessary to make up fifteen per centum, may be added in such warehouse without payment of any duty thereon; and when any spirit has been added to any lime or lemon juice and the same has been labelled as aforesaid, it must be deposited in the warehouse for delivery as ship's stores only, upon such terms and subject to such regulations of the Commissioners of Customs as are applicable to the delivery of ship's stores from the warehouse.

4. The master or owner of every such foreign-going ship (except those bound to European ports or to ports in the Mediterranean Sea, and also except such ships or classes of ships bound to ports on the eastern coast of America north of the thirty-fifth degree of north latitude, and to any islands or places in the Atlantic Ocean north of the same limit, as the Board of Trade may from time to time exempt from this enactment), must provide and cause to be kept on board such ship a sufficient quantity of lime or lemon juice from the warehouse, duly labelled as aforesaid, such labels to remain intact until twenty-four hours at least after such ship has left her port of departure on her foreign voyage, or a sufficient quantity of such other anti-scorbutics, if any, of such quality, and composed of such materials, and packed and kept in such manner, as Her Majesty by Order in Council may from time to time direct.

5. The master of every such ship as last aforesaid must serve or cause to be served out the lime or lemon juice with sugar (such sugar to be in addition to any sugar required by the articles), or other such anti-scorbutics as aforesaid, to the crew so soon as they have been at sea for ten days, and during the remainder of the voyage, except during such time as they are in harbour and are there supplied with fresh provisions; the lime or lemon juice and sugar to be served out daily at the rate of an ounce each per day

to each member of the crew, and to be mixed with a due proportion of water before being served out, or the other anti-scorbutics, if any, at such times and in such quantities as Her Majesty by Order in Council may from time to time direct.

6. If at any time when such lime or lemon juice or anti-scorbutics is or are so served out as aforesaid, any seaman or apprentice refuses or neglects to take the same, such neglect or refusal must be entered in the official log-book in the manner provided by the 281st section of the principal Act, and must be signed by the master and by the mate, or some other of the crew, and also by the surgeon or medical practitioner on board, if any.

And if in any such ship as aforesaid such medicines, medical stores, book of instructions, lime or lemon juice, sugar or anti-scorbutics as are hereinbefore required are not provided, packed, and kept on board as hereinbefore required, the owner or master is deemed to be in fault, and for each default incurs a penalty not exceeding £20, unless he can prove that the non-compliance with the above provisions, or any of them, was not caused through any inattention, neglect, or wilful default on his part; and if the lime or lemon juice and sugar or other anti-scorbutics are not served out in the case and manner hereinbefore directed, or if entry is not made in the official log in the case and manner hereinbefore required, the master is deemed to be in fault, and for each default incurs a penalty not exceeding £5, unless he can prove that the non-compliance with the above provisions, or any of them, did not arise through any neglect, omission, or wilful default on his part; and if in any case it is proved that some person other than the master or owner is in default, then such other person is liable to a penalty not exceeding £20 (Merchant Shipping Act, 1867, 30 and 31 Vict., cap. 124, sec. 4).

The captain must keep on board proper weights and measures, for the purpose of determining the quantities of the several provisions and articles served out, and must allow the same to be used at the time of serving out such provisions and articles, in the presence of a witness, whenever any dispute arises about the quantities; and, in default, he, for every offence, incurs a penalty not exceeding £10.[1]

Upon being required by the Board of Trade so to do, any Local Marine Board can appoint and remove a medical inspector of ships for the port, and can fix his remuneration, such remuneration being subject to the control of the Board of Trade; and at ports where there are no Local Marine Boards, the Board of Trade can appoint and remove such inspectors and fix their remuneration. It is the duty of such medical inspectors to inspect the medicines, medical stores, lime or lemon juice, or other articles, sugar and vinegar, required to be kept on board any such ships as aforesaid: and if such inspection be made at places where there are Local Marine Boards, it must be made under their direction, and also, in any special cases, under direction of the Board of Trade; and if made at places where there are no Local Marine Boards, the inspection must be made under the directions of the Board of Trade. For the purpose of this inspection, the medical inspectors have the same powers as the inspectors appointed by the Board of Trade under the first part of the Merchant Shipping Act;[2] but, if required, by timely notice in writing from the

[1] Sec. 225. [2] Secs. 14, 15.

captain, owner, or consignee, every inspector must make his inspection three days, at least, before the ship proceeds to sea; and if the result of the inspection is satisfactory, he need not again make inspection before the commencement of the voyage, unless he has reason to suspect that some of the articles inspected have been subsequently removed, injured, or destroyed.[1]

When any medical inspector is of opinion that, in any ship required by the Act to carry such articles as aforesaid, the same or any of them are deficient in quantity or quality, or are placed in improper vessels, he must signify the same in writing to the chief officer of customs of the port where the ship is lying, and also to the captain, owner, or consignee thereof, and thereupon the captain, before proceeding to sea, must produce to the chief officer of customs a certificate under the hand of that medical inspector, or of some other medical inspector, that such deficiency has been supplied or remedied, or that such improper vessels have been replaced by proper vessels, as the case may require. And the chief officer of customs must not grant a clearance for such ship without production of this certificate, and if she attempts to go to sea without a clearance, he can detain her until the certificate is produced. If the ship proceeds to sea without the production of this certificate, the captain, owner, or consignee thereof incurs a penalty not exceeding £20.[2]

Any person who manufactures, sells, or keeps or offers for sale, any medicines or medical stores, as aforesaid, of bad quality, for the use of any ship, for each such offence incurs a penalty not exceeding £20.[3]

In any British possession out of the United Kingdom, the Governor or officer administering the government for the time being has, subject to the laws of such possession, power to make regulations concerning the supply within such possession of lime or lemon juice and anti-scorbutics for the use of ships; and any lime or lemon juice and anti-scorbutics duly supplied in accordance with any such regulations are to be deemed to be fit and proper for the use of ships (Merchant Shipping Act, 1867, 30 and 31 Vict., cap. 124, sec. 6).

It is the duty of the owner to have on board a proper supply of medicines; and if, through his neglect to keep on board this proper supply, a seaman's health suffers, besides the owner's liability for the penalty imposed by the Act, the seaman who has sustained injury from a breach of this statutory duty is entitled to an action against the owner for the recovery of damages.[4]

The seaman has also, in addition, a special statutory remedy for his expenses, by virtue of section 7 of the Merchant Shipping Act, 1867, 30 and 31 Vict., cap. 124, which provides, that when it is shown that any seaman or apprentice who is ill has, through the neglect of the master or owner, not been provided with proper food and water, according to his agreement, or with the accommodation or medicines, &c., required by law, then, unless it can be shown that the illness has been produced by other causes, the owner or master shall be liable to pay all expenses properly and necessarily incurred by reason of such illness (not exceeding in the whole three months' wages), either by the seaman himself, or by

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[1] Sec. 226. [2] Sec. 226. [3] 30 and 31 Vict., cap. 124, sec. 5.
[4] Couch *v.* Steel, 3 E. and B. 402.

Her Majesty's Government or by any parochial authority, on his behalf, and such expenses may be recovered as if they were wages duly earned. On the other hand, by the 8th section of the same Act it is provided, that where a seaman is incapable of performing his duty by reason of any illness resulting from his own wilful act or default, he shall not be entitled to any wages for the time during which he is so incapacitated.

The following rules must be observed with respect to expenses attendant on illness and death :—

1. If the captain or any seaman or apprentice receives any hurt or injury in the service of the ship to which he belongs, the expense of providing any surgical and medical advice, with attendance and medicines, and of his subsistence until he is cured, or dies, or is brought back to some port in the United Kingdom, if shipped in the United Kingdom, or, if shipped in some British possession, to some port in that possession, and of his conveyance to such port, and the expense (if any) of his burial, must be defrayed by the owner of the ship, without any deduction on that account from the wages of the captain, seaman, or apprentice.

2. If the captain or any seaman or apprentice is, on account of any illness, temporarily removed from his ship, for the purpose of preventing infection, or otherwise for the convenience of the ship, and subsequently returns to his duty, the expense of such removal and of providing the necessary advice, with attendance and medicines, and of his subsistence whilst away from the ship, must be defrayed in like manner.

3. The expense of all medicines and surgical or medical advice and attendance given to any captain, seaman, or apprentice, whilst on board his ship, must be defrayed in like manner.

4. In all other cases, any reasonable expense, duly incurred by the owner for any seaman in respect of illness, and also any reasonable expenses duly incurred by the owner in respect of the burial of any seaman or apprentice who dies whilst on service, have, if duly proved, to be deducted from the wages of such seaman or apprentice.[1]

If any such expenses in respect of the illness, injury, or hurt of any seaman or apprentice, as are to be borne by the owner, are paid by any consular officer or other person on behalf of Her Majesty, or if any other expenses, in respect of the injury, illness, or hurt of any seaman or apprentice (whose wages are not accounted for to that officer under the provisions of the Act in that behalf), are so paid, these expenses must be repaid to such officer or other person by the captain of the ship, and, if not so repaid, the amount thereof, with costs, is a charge upon the ship, and is recoverable from the captain, or from the owner of the ship for the time being, as a debt due to Her Majesty, either by ordinary process of law, or in the manner in which seamen are, by the Act, enabled to recover wages. In any proceeding for recovery thereof, the production of a certificate of the facts, signed by such officer or other person, with such vouchers (if any) as the case requires, is sufficient proof that these expenses were duly paid by such consular officer or other person as aforesaid.[2]

Every foreign-going ship, having one hundred persons or upwards on board, must carry on board, as part of her complement, some person duly authorised by law to practise as physician, surgeon, or apothecary; and, in

[1] Sec. 228. [2] Sec. 229.

default, the owner, for every voyage of any such ship made without this medical practitioner, incurs a penalty not exceeding £100. But nothing in the Merchant Shipping Act in anywise affects any provision contained in the "Passengers Act, 1852," concerning the carriage of medical practitioners by the class of ships therein named "passenger ships," nor is any such "passenger ship," if not thereby required to carry a medical practitioner, required by the Merchant Shipping Act to do so.[1]

The following rules are to be observed with respect to the medical inspection of seamen; that is to say—

1. At any port where there is a Local Marine Board, the Local Marine Board, and at other ports in the United Kingdom the Board of Trade, may appoint a medical inspector of seamen.

2. Such medical inspector of seamen must, on application by the owner or master of any ship, examine any seaman applying for employment in such ship, and must give to the superintendent of the Mercantile Marine Office a report under his hand stating whether such seaman is in a fit state for duty at sea, and a copy of such report must be given to the master or owner of the ship.

3. The master or owner applying for such inspection has to pay to the superintendent such fees as the Board of Trade direct.

4. In British possessions out of the United Kingdom, the Governor or other officer administering the government for the time being has the power of appointing medical inspectors of seamen, of charging fees for inspections when applied for, and of determining the remuneration to be paid to such inspectors (Merchant Shipping Act, 1867, 30 and 31 Vict., cap. 124, sec. 10).

The following rules are to be observed with respect to accommodation on board British ships; that is to say—

1. Every place in any ship occupied by seamen or apprentices, and appropriated to their use, must have for every such seaman or apprentice a space of not less than seventy-two cubic feet, and of not less than twelve superficial feet, measured on the deck or floor of such place.

2. Every such place must be such as to make the space aforesaid available for the proper accommodation of the men who are to occupy it, must be securely constructed, properly lighted and ventilated, properly protected from weather and sea, and, as far as practicable, properly shut off and protected from effluvium which may be caused by cargo or bilge water.

3. No such place as aforesaid is deemed to be such as to authorise a deduction from registered tonnage, under the provisions hereinafter contained, unless there is or are in the ship one or more properly constructed privy or privies for the use of the crew; such privy or privies to be of such number and of such construction as may be approved by the surveyor hereinafter mentioned.

4. Every such place must, whenever the ship is registered or re-registered, be inspected by one of the surveyors appointed by the Board of Trade under Part IV. of the principal Act, who, if satisfied that the same is in all respects such as is required by this Act, will give to the collector of customs a certificate to that effect, and thereupon such space is deducted from the register tonnage.

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[1] Sec. 230.

5. No such deduction from tonnage as aforesaid will be authorised unless there is permanently cut in a beam, and cut in or painted on or over the doorway or hatchway of every such place, the number of men which it is constructed to accommodate, with the words "Certified to accommodate seamen."

6. Every such place must be kept free from stores or goods of any kind, not being the personal property of the crew in use during the voyage.

7. Upon any complaint concerning any such place as aforesaid, one of the surveyors appointed by the Board of Trade may inspect such place, and if he finds that any of the provisions with respect to the same are not complied with, he must report the same to the collector of customs at the port where the ship is registered, and thereupon the registered tonnage will be altered, and the deduction aforesaid in respect of space disallowed, unless and until it be certified by such surveyor, or by some other surveyor appointed by the Board of Trade, that the provisions in respect of such place are fully complied with.

8. If any such place in any ship is not kept free from goods and stores as aforesaid, the master is deemed to be in fault, and for every such failure to comply with these provisions he forfeits and pays to each seaman lodged in such place the sum of one shilling a day for each day after complaint made to him by any two or more of such seamen during which any goods or stores, not being the personal property of the crew, are stored or kept therein.

9. If in any other respect these provisions are not observed with respect to any such place in any ship, the owner is deemed to be in fault, and for every failure to comply with the provisions incurs a penalty not exceeding £20 (Merchant Shipping Act, 1867, 30 and 31 Vict., cap. 124, sec. 9).

IX.—DISCIPLINE, DESERTION, AND FORFEITURES.

Any seaman or apprentice belonging to any British ship who,—by wilful breach of duty,—by neglect of duty,—or by reason of drunkenness,—does any act tending to the immediate loss, destruction, or serious damage of his ship,—or tending immediately to endanger the life or limb of any person belonging to or on board of such ship,—or who,—by wilful breach of duty,—or by neglect of duty,—or by reason of drunkenness,—refuses or omits to do any lawful act, proper and reasonable to be done by him, for preserving such ship from immediate loss, destruction, or serious damage,—or for preserving any person belonging to or on board of such ship from immediate danger to life or limb,—he, for every such offence, is deemed guilty of a misdemeanour.[1]

In order to incur a misdemeanour under this section, it is not necessary that the act done or omitted should be followed by actual loss, destruction. or damage of the ship.[2]

When any duly engaged seaman, or any apprentice to the sea-service, commits any of the following offences, he is liable to be punished summarily as follows:—

1. For desertion, he is liable to imprisonment, for any period not ex-

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[1] Sec. 239. [2] Regina *v.* Gardner, 1 F. and F. 669.

ceeding twelve weeks, with or without hard labour, and to forfeit all or any part of the clothes he leaves on board, and all or any part of the wages or emoluments he has then earned;—and also, if such desertion takes place abroad, at the discretion of the court, to forfeit all or any part of the wages or emoluments he may earn in any other ship in which he may be employed until his next return to the United Kingdom, and to satisfy any excess of wages paid by the master or owner of the ship from which he deserts to any substitute engaged in his place at a higher rate of wages than the rate stipulated to be paid to him.

2. For neglecting or refusing (without reasonable cause) to join his ship, or to proceed to sea in his ship, or for absence without leave, at any time within twenty-four hours of the ship's sailing from any port, either at the commencement or during the progress of any voyage,—or for absence at any time without leave, and without sufficient reason, from his ship or from his duty,—not amounting to desertion, or not treated as such by the captain,—he is liable to imprisonment for any period not exceeding ten weeks, with or without hard labour, and also, at the discretion of the court, to forfeit out of his wages a sum not exceeding the amount of two days' pay; and, in addition, for every twenty-four hours of absence, either a sum not exceeding six days' pay, or any expenses which have been properly incurred in hiring a substitute.

3. For quitting the ship without leave, after her arrival at her port of delivery, and before she is placed in security, he is liable to forfeit, out of his wages, a sum not exceeding one month's pay.

Leaving the ship on her arrival at the port of delivery, without just cause, and until delivery of the cargo, is desertion.[1]

4. For wilful disobedience to any lawful commands, he is liable to imprisonment for any period not exceeding four weeks, with or without hard labour,—and also, at the discretion of the court, to forfeit out of his wages a sum not exceeding two days' pay.

5. For continued wilful disobedience to lawful commands,—or continued wilful neglect of duty,—he is liable to imprisonment for any period not exceeding twelve weeks, with or without hard labour,—and also, at the discretion of the court, to forfeit, for every twenty-four hours' continuance of such disobedience or neglect, either a sum not exceeding six days' pay, or any expenses which have been properly incurred in hiring a substitute.

6. For assaulting any captain or mate, he is liable to imprisonment for any period not exceeding twelve weeks, with or without hard labour.

7. For combining with any other or others of the crew to disobey lawful commands, or to neglect duty, or to impede the navigation of the ship, or the progress of the voyage, he is liable to imprisonment not exceeding twelve weeks, with or without hard labour.

8. For wilfully damaging the ship, or embezzling or wilfully damaging any of her stores or cargo, he is liable to forfeit out of his wages a sum equal in amount to the loss thereby sustained,—and also, at the discretion of the court, to imprisonment for any period not exceeding twelve weeks, with or without hard labour.

9. For any act of smuggling of which he is convicted, and whereby loss or damage is occasioned to the captain or owner, he is liable to pay

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[1] *The Test*, 3 Hag. 307.

to the captain or owner such a sum as is sufficient to reimburse the captain or owner for such loss or damage; and the whole or a proportionate part of his wages can be retained in satisfaction or on account of such liability, without prejudice to any further remedy.[1]

Whenever, in any proceeding against any seaman or apprentice belonging to any ship for desertion, or for neglecting or refusing to join, or to proceed to sea in his ship, or for being absent from or quitting the same without leave, it is alleged by one-fourth of the seamen belonging to such ship, or, if the number of such seamen exceed twenty, by not less than five such seamen, that such ship is, by reason of unseaworthiness, overloading, improper loading, defective equipment, or for any other reason, not in a fit condition to proceed to sea, or that the accommodation in such ships is insufficient, the court having cognisance of the case are to take such means as may be in their power to satisfy themselves concerning the truth or untruth of such allegation, and are, for that purpose, to receive the evidence of the person or persons making the same, and are to have power to summon any other witnesses whose evidence they may think it desirable to hear; and if satisfied that the allegation is groundless, they are to adjudicate forthwith, but if not so satisfied, they are to cause the ship to be surveyed. But no seaman or apprentice charged with desertion, or with quitting his ship without leave, has any right to apply for such survey, unless, before quitting his ship, he has complained to the master of the circumstances so alleged in justification. For the purposes of the survey, the court are to employ a surveyor appointed by the Board of Trade, or if such a person cannot be obtained without unreasonable delay or expense, or is incompetent, then some other impartial surveyor, having no personal interest in the matter, who surveys and makes to the court a report in writing. The court then causes a copy of the report to be communicated to the parties, and unless it is proved to the satisfaction of the court that the opinions expressed in such report are erroneous, the court must determine the questions before them in accordance with those opinions. The surveyor has all the powers of an inspector appointed by the Board of Trade under the Merchant Shipping Act, 1854. The costs of the survey are determined by the Board of Trade according to a scale of fees fixed by them, and are paid in the first instance out of the Mercantile Marine Fund. If the court are satisfied that the ship is seaworthy, or (as the case may be) that the accommodation is sufficient, the costs of the survey are to be paid by the complainants, and may be deducted by the master or owner out of the wages due or to become due to such persons, and are to be paid over to the Board of Trade. If the court be not so satisfied, the costs of survey are to be paid to the Board by the master or owner of the ship.[2]

In addition to this right of survey at the instance of seamen, naval courts may, if they think fit, direct a survey of a ship, and such survey takes place in manner hereinbefore mentioned.[3]

If a seaman or apprentice is detained on a charge of desertion, or any kindred offence, and if upon a survey it be proved that the ship is not in a fit condition to proceed to sea, or that her accommodation is insufficient,

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[1] Sec. 243.

[2] Merchant Shipping Act, 1871, 34 and 35 Vict., cap. 110, sec. 7.

[3] Ibid. sec. 8.

the owner or master becomes liable to pay to such seaman or apprentice such compensation for his detention as the court may award.[1]

It is to be observed that any proceedings under the Act of 1871 are independent of, and may be in addition to, proceedings under the Act of 1876.

Upon the commission of any of the offences enumerated in section 243 of the principal Act, an entry thereof must be made in the official log-book, and signed by the captain, and also by the mate or one of the crew; and if the offender is still in the ship, he must, before the next arrival of the ship at any port,—or, if she is at the time in port, before her departure therefrom,—either be furnished with a copy of such entry, or have the same read over, distinctly and audibly, to him, and he can, thereupon, make such reply thereto as he thinks fit. A statement that a copy of this entry has been so furnished, or that the same has been so read over as aforesaid, and the reply (if any) made by the offender, must likewise be entered and signed in manner before mentioned; and, in any subsequent legal proceedings, these entries, made as before required, must, if practicable, be produced or proved, and, in default of such production or proof, the court hearing the case can, at its discretion, refuse to receive evidence of the offence.[2]

Every seafaring person whom the captain of a ship is, under the authority of the Merchant Shipping Act, or of any other Act of Parliament, compelled to take on board and convey, and every person who goes to sea in any ship without consent of the captain or owner, or other person entitled to give such consent, must, so long as he remains in the ship, be subject to the same laws and regulations for preserving discipline, and to the same penalties and punishments for offences constituting or tending to a breach of discipline, to which he would be subject if he were a member of the crew, and had signed the agreement.[3]

Whenever, either at the commencement or during the progress of a voyage, any seaman or apprentice neglects or refuses to join, or deserts from, the ship in which he is duly engaged to serve, or is found absenting himself therefrom without leave, the captain, or any mate, or the owner, ship's husband, or consignee, can, in any place in Her Majesty's dominions, with or without the assistance of the local police officers or constables (who, by the Act, are directed to give the same, if required), and also at any place out of Her Majesty's dominions, if and so far as the laws in force at such place will permit, apprehend him without first procuring a warrant; and may, thereupon, in any case, and must, in case he so requires it, and it is practicable, convey him before some court capable of taking cognisance of the matter, to be dealt with according to law; and, for the purpose of conveying him before such court, he can detain him in custody for a period not exceeding twenty-four hours, or such shorter time as may be necessary, or may, if he does not so require, and if there is no such court at or near the place, at once convey him on board. If such apprehension appears to the court before which the case is brought to have been made on improper or insufficient grounds, the captain, mate, owner, ship's husband, or consignee, who makes the same, or causes the same to be made, incurs a penalty not exceeding £20; but such penalty, if inflicted, is a bar to any action in respect of that apprehension.[4]

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[1] Merchant Shipping Act, 1873, 36 and 37 Vict., cap. 85, sec. 9.
[2] Sec. 244. [3] Sec. 245. [4] Sec. 246.

When any seaman or apprentice is brought before a court, on the ground of his having neglected or refused to join, or to proceed to sea in, the ship in which he has engaged to serve, or of having deserted, or otherwise absented himself therefrom without leave, the court can, if the captain or the owner or his agent so requires, instead of committing the offender to prison, cause him to be conveyed on board, for the purpose of proceeding on the voyage, or deliver him to the captain, or any mate of the ship, or to the owner or his agent, to be by them so conveyed; and, in such case, can order any costs or expenses properly so incurred, by or on behalf of the captain or owner, by reason of the offence, to be paid by the offender, and, if necessary, to be deducted from any wages which he has then earned, or which, by virtue of his then existing engagement, he may afterwards earn.[1]

If any seaman or apprentice is imprisoned on the ground of his having neglected or refused to join, or to proceed to sea in, the ship in which he has engaged to serve, or of having deserted or otherwise absented himself therefrom without leave, or of his having committed any other breach of discipline,—and if, during his imprisonment, and before his engagement is at an end, his services are required on board his ship, any justice can, at the request of the captain or of the owner or his agent, cause the seaman or apprentice to be conveyed on board his ship, for the purpose of proceeding on the voyage, or to be delivered to the captain or any mate of the ship, or to the owner or his agent, to be by them so conveyed, notwithstanding that the termination of the period for which he was sentenced to imprisonment has not arrived.[2]

In all cases of desertion from a ship in any place abroad, the captain must produce the entry of such desertion in the official log-book to the person or persons required by the Act to endorse on the agreement a certificate of such desertion; and such person or persons must, thereupon, make and certify a copy of such entry, and also a copy of this certificate of desertion. If such person is a public functionary, he must, and in other cases, the captain must, forthwith transmit these copies to the Registrar-General of Seamen in England, and the registrar must, if required, cause the same to be produced in any legal proceeding. Such copies, if purporting to be so made and certified as aforesaid, and certified to have come from the custody of the registrar, are to be received in any legal proceedings relating to such desertion as evidence of the entries therein appearing.[3]

When any question arises whether the wages of a seaman or apprentice are forfeited for desertion, it is sufficient for the party insisting on the forfeiture to show that such seaman or apprentice was duly engaged in, or that he belonged to, the ship from which he is alleged to have deserted, and that he quitted such ship before the completion of the voyage or engagement, or, if such voyage was to terminate in the United Kingdom, and the ship has not returned, that he is absent from her, and that an entry of the desertion has been duly made in the official log-book,—the desertion is held to be proved, so far as relates to any forfeiture of wages or emoluments under the provisions of the Act, unless the seaman or apprentice can produce a proper certificate of discharge, or can otherwise

[1] Sec. 247. [2] Sec. 248. [3] Sec. 249.

show, to the satisfaction of the court, that he had sufficient reason for leaving his ship.[1]

When, in any proceedings relating to seamen's wages, it is shown that any seaman or apprentice has, in the course of the voyage, been convicted of any offence, by any competent tribunal, and rightfully punished therefor by imprisonment or otherwise, the court hearing the case can direct a part of the wages due to such seaman, not exceeding £3, to be applied in reimbursing any costs properly incurred by the captain in procuring such conviction and punishment.[2]

When any seaman contracts for wages by the voyage, or by the run, or by the share, and not by the month or other stated period of time, the amount of forfeiture to be incurred under the Act must be taken to be an amount bearing the same proportion to the whole wages or share as a calendar month or other period before mentioned in fixing the amount of such forfeiture (as the case may be) bears to the whole time spent in the voyage; and if the whole time spent in the voyage does not exceed the period for which the pay is to be forfeited, the forfeiture extends to the whole wages or share.[3]

All clothes, effects, wages, and emoluments which, under the provisions of the Act, are forfeited for desertion, must be applied, in the first instance, in or towards the reimbursement of the expenses occasioned by such desertion to the captain or owner of the ship from which the desertion has taken place, and, if earned subsequently to the desertion, can be recovered by the captain, or by the owner or his agent, in the same manner as the deserter could have recovered the same, had they not been forfeited; and, in any legal proceeding to recover such wages, the court can order the same to be paid accordingly. Subject to this reimbursement, the forfeited wages must be paid into the receipt of Her Majesty's exchequer, in such manner as the Treasury may direct, and are carried to and form part of the Consolidated Fund of the United Kingdom. And, in all other cases of forfeiture of wages under the provisions of the Act, the forfeiture is, in the absence of any specific directions to the contrary, for the benefit of the captain or owner by whom the wages are payable.[4]

Any question concerning the forfeiture of or deduction from the wages of any seaman or apprentice can be determined in any proceeding lawfully instituted with respect to such wages, notwithstanding that the offence in respect of which such question arises,—though, by the Act, made punishable by imprisonment as well as forfeiture,—has not been made the subject of any criminal proceeding.[5]

If, on or before being engaged, any seaman, wilfully and fraudulently, makes a false statement of his last ship, or last alleged ship, or wilfully and fraudulently makes a false statement of his own name, he incurs a penalty not exceeding £5; and this penalty can be deducted from any wages he may earn by virtue of such engagement as aforesaid, and is,—subject to reimbursement of the loss and expense (if any) occasioned by any previous desertion,—to be paid and applied in the same manner as other penalties under the Act.[6]

When any seaman commits an act of misconduct, for which his agree-

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[1] Sec. 250. [2] Sec. 251. [3] Sec. 252.
[4] Sec. 253. [5] Sec. 254. [6] Sec. 255; see sec. 524.

ment imposes a fine, and which it is intended to punish by enforcing the fine, an entry thereof must be made in the official log-book, and a copy of that entry must be furnished, or the same read over, to the offender, and an entry of this reading over, and of the reply (if any) made by the offender, must be made in the manner and subject to the conditions in section 244, with respect to offences against discipline specified in and punishable under the Act. This fine must be deducted and paid over as follows :—1st, If the offender is discharged in the United Kingdom, and the offence and the foresaid entries thereof are proved,—in the case of a foreign-going ship,—to the satisfaction of the superintendent before whom the offender is discharged,—and, in the case of a home-trade ship, to the satisfaction of the superintendent at or nearest to the place at which the crew is discharged,—the captain or owner deducts such fine from the wages of the offender, and pays the same over to the superintendent; 2d, If, before the final discharge of the crew in the United Kingdom, any such offender enters into any of Her Majesty's ships, or is discharged abroad, and the offence and the foresaid entries are proved to the satisfaction of the officer in command of the ship into which he so enters, or of the consular officer, officer of customs, or other person by whose sanction he is discharged, the fine must thereupon be deducted as aforesaid, and an entry of this deduction must then be made in the official log-book (if any), and signed by such officer or other person, and, on the return of the ship to the United Kingdom, the captain or owner must pay over such fine,—in the case of foreign-going ships, to the superintendent before whom the crew is discharged,—and, in the case of home-trade ships, to the superintendent at or nearest to the place at which the crew is discharged. And if any captain or owner neglects or refuses to pay over any such fine in manner foresaid, he, for each such offence, incurs a penalty not exceeding six times the amount of the fine retained by him; but no act of misconduct for which any such fine has been inflicted and paid must be otherwise punished under the provisions of the Merchant Shipping Act.[1]

Every person who, by any means whatever, persuades or attempts to persuade any seaman or apprentice to neglect or refuse to join, or to proceed to sea in, or to desert from his ship, or otherwise to absent himself from his duty, incurs, for each such offence, in respect of each such seaman or apprentice, a penalty not exceeding £10. And every person who wilfully harbours or secretes any seaman or apprentice who has deserted from his ship, or who has wilfully neglected or refused to join, or has deserted from his ship, knowing or having reason to believe such seaman or apprentice to have so done,—he incurs, for every such seaman or apprentice so harboured or secreted, a penalty not exceeding £20.[2]

In a prosecution under this section for wilfully harbouring a seaman who has deserted, it must be proved by production of the original register, or an examined and certified copy, that the ship was a duly registered British ship.[3]

Any person who secretes himself and goes to sea in any ship, without the consent of either owner, consignee, or captain, or mate, or of any person in charge of such ship, or of any other person entitled to give such

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[1] Sec. 256. [2] Sec. 257. [3] Leary *v.* Lloyd, 6 Jur. *n. s.* 1246.

consent, incurs a penalty not exceeding £20,—or is liable to imprisonment, with or without hard labour, for any period not exceeding four weeks.[1]

The foregoing sections, from section 239, under the head "Discipline," have reference to British ships only.[2]

X.—ENTERING INTO ROYAL NAVY.

Any seaman can leave his ship, for the purpose of immediately entering into the naval service of Her Majesty, and his so leaving his ship is not to be deemed a desertion therefrom, and does not render him liable to any punishment or forfeiture whatever; and all stipulations introduced into any agreement, whereby any seaman is declared to incur any forfeiture, or is exposed to any loss, in case he enters into Her Majesty's naval service, are void, and every captain or owner who causes such stipulations to be so introduced incurs a penalty not exceeding £20.[3]

Whenever any seaman, without having previously committed any act amounting to and treated by the captain as desertion, leaves his ship in order to enter the naval service of Her Majesty, *and is received into such service*, the captain must deliver to him his clothes and effects on board such ship, and must pay the proportionate amount of the wages down to the time of such entry, subject to all just deductions.[4]

But it is not every leaving of his ship and entering into the navy that will free a seaman from the punishment or forfeiture for desertion;—as, when a seaman quitted his ship in defiance of the captain, with opprobrious language, and, *without any declaration of his intention when he quitted*, entered into a king's ship within twenty-four hours,—this was held a desertion, working a forfeiture of wages.[5]

The proportionate amount of wages due to a seaman thus entering the navy is to be paid as follows:—The captain must pay the same to the officer authorised to receive the seaman into Her Majesty's service, either in money, or by bill (exempt from stamp duty) drawn upon the owner, and payable at sight, to the order of the Accountant-General of the Navy, and the receipt of the officer is a discharge for the money or bill so given. If the wages are paid in money, the money is credited in the muster-book of the ship to the account of the seaman; and if paid by bill, this bill is noted in the muster-book, and sent to the Accountant-General, who presents, or causes the same to be presented for payment, and credits the produce thereof to the seaman, and this money or produce (as the case may be) is not to be paid to the seaman until the time he would have been entitled to receive the same, if he had remained in the service of the ship he had so quitted. If this bill is not duly paid when presented, the Accountant-General, or the seaman on whose behalf the same was granted, can sue thereon, or can recover the wages due by all or any of the means by which wages due to merchant seamen can be recovered. And if, upon any seaman leaving his ship, in manner and for the purpose aforesaid, the captain fails to deliver his clothes and effects, or to pay his wages as before required, he, in addition to his liability to pay and deliver

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[1] Sec. 258. [2] Leary, *ut sup.* [3] Sec. 214.
[4] Sec. 215. [5] *The Amphitrite*, 2 Hag. 403.

the same, incurs a penalty not exceeding £20. But no officer who receives any such bill as aforesaid is subject to any liability in respect thereof, except for the safe custody of the same until sent to the Accountant-General.[1]

If, on any seaman leaving his ship for the purpose of entering the naval service of Her Majesty, the owner or captain of the ship shows, to the satisfaction of the Admiralty, that he has paid, or properly rendered himself liable to pay, an advance of wages to or on account of such seaman, and that he has not, at the time of his quitting the ship, duly earned such advance by service therein, and, in case of such liability as aforesaid, if the captain or owner actually satisfy the same, then the Admiralty can pay to the captain or owner so much of the advance as has not been duly earned, and deduct the sum so paid from the wages of the seaman, earned or to be earned, in the naval service of Her Majesty.[2]

If, in consequence of any seaman thus leaving his ship *without the consent of the captain or owner*, it becomes necessary, for the safety and proper navigation of the ship, to engage a substitute or substitutes, and if the wages or other remuneration paid to the substitute or substitutes for subsequent service, exceed the wages or remuneration which would have been payable to such seaman, under his engagement, for similar service, the captain or owner can apply to the Registrar of the High Court of Admiralty for a certificate authorising payment of such excess; and this application must be in such form, and accompanied by such documents and by such statements, whether on oath or otherwise, as the judge of that court from time to time directs.[3] Upon receiving any such application, the registrar gives notice thereof, and of the sum claimed, to the Secretary of the Admiralty, and proceeds to examine the application; and he can call upon the Registrar-General of Seamen to produce any papers in his possession relating thereto, and also for further evidence. If the whole of the claim appears to him to be just, he gives a certificate accordingly; but if he considers that the claim, or any part of it, is not just, he must give notice of such his opinion, in writing under his hand, to the person making the application, or to his attorney or agent. And if, within sixteen days from the giving of this notice, the person making the application does not leave, or cause to be left, at the office of the Registrar of the Court of Admiralty, a written notice demanding that his said application be referred to the judge of that court, then the registrar finally decides thereon, and certifies accordingly; but, if such notice is left as aforesaid, then the application stands referred to the judge in his chambers, and his decision thereon is final; and the registrar certifies the same accordingly. In every proceeding under the Merchant Shipping Act, the registrar and judge, respectively, have full power to administer oaths, and to exercise all the powers of the court, as in any other proceeding within its jurisdiction; and the registrar or judge (as the case may be), if he thinks fit, can allow, for the costs of any proceedings under the Act, any sum, not exceeding £5, for each seaman so quitting his ship as aforesaid, and such sum is to be added to the sum allowed, and is certified by the registrar accordingly.[4]

Every certificate so given is sent, by post or otherwise, to the person

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[1] Sec. 215. [2] Sec. 216. [3] Sec. 217. [4] Sec. 218.

making the application, his attorney or agent, and a copy thereof to the Accountant-General of the Navy; and upon delivery to him of the original certificate, together with a receipt or writing, purporting to be a receipt from the captain or owner making the application, the Accountant-General pays to the person delivering the same, out of the moneys applicable to the naval service of Her Majesty, and granted by Parliament for the purpose, the amount mentioned in the certificate; and the certificate and receipt absolutely discharge the Accountant-General and Her Majesty from all liability in respect of the moneys so paid, or of the said application.[1]

Every person who, in making or supporting any such application to the High Court of Admiralty, forges, assists in forging, or procures to be forged,—or who fraudulently alters, assists in fraudulently altering, or procures to be fraudulently altered, any document,—and every person who, in making or supporting such application, presents or makes use of any such forged or altered document,—or who, in making or supporting any such application, makes or gives, or assists in making or giving, or procures to be made or given, any false evidence or explanation, knowing the same to be false,—such person is deemed guilty of a misdemeanour.[2]

XI.—CRIMES AND NAVAL COURTS ON HIGH SEAS AND ABROAD.

All offences against property or person, committed in or at any place, either ashore or afloat, out of Her Majesty's dominions, by any captain, seaman, or apprentice, who is, at the time the offence is committed, or has been within three months previously, employed in any British ship, are deemed to be offences of the same nature respectively,—to be liable to the same punishments respectively,—and to be inquired of, heard, tried, determined, and adjudged in the same manner, by the same courts, and in the same places, as if such offences had been committed within the jurisdiction of the Admiralty of England; and the costs and expenses of the prosecution of any such offence can be directed to be paid, as in the case of costs and expenses of prosecutions for offences committed within the jurisdiction of the Admiralty of England.[3]

The following rules are to be observed with respect to offences committed on the high seas or abroad:—

1. Whenever any complaint is made to any British consular officer of any of the offences mentioned in the foregoing section, or of any offence on the high seas, having been committed by any captain, seaman, or apprentice belonging to any British ship, the consular officer can inquire into the case upon oath, and, if the case so requires, can take any steps in his power for the purpose of placing the offender under necessary restraint, and of sending him, as soon as practicable, in safe custody, to the United Kingdom, or to any possession where there is a court capable of taking cognisance of the offence,—in any ship belonging to Her Majesty or to any of Her Majesty's subjects,—to be there proceeded against according to law.

2. For the foresaid purpose, the consular officer can order the captain of any ship belonging to any of Her Majesty's subjects bound to the United Kingdom, or to such British possession as aforesaid, to receive

[1] Sec. 219. [2] Sec. 220. [3] Sec. 267.

and afford a passage, and subsistence during the voyage, to any offender as aforesaid, and to the witnesses,—so that a captain be not required to receive more than one offender for every 100 tons of his ship's registered tonnage, or more than one witness for every 50 tons of such tonnage,—and the consular officer must endorse upon the ship's agreement such particulars, with respect to any offenders or witnesses sent in her, as the Board of Trade requires.

3. On his ship's arrival in the United Kingdom, or in the British possession as aforesaid, the captain must give every offender so committed to his charge into the custody of some police officer or constable, who must take the offender before a justice of the peace or other magistrate empowered by law to deal with the matter, and who deals with the matter as in cases of offences committed upon the high seas.

And any captain as aforesaid who, when required by any British consular officer to afford a passage and subsistence to any offender or witness, does not receive him and afford a passage and subsistence to him, or who does not deliver any offender committed to his charge into the custody of some police officer or constable as before directed, he, for each such offence, incurs a penalty not exceeding £50. The expense of imprisoning any such offender, and of conveying him and the witnesses to the United Kingdom, or to a British possession as aforesaid, in any manner other than in the ships to which they respectively belong, is part of the costs of prosecution, or is paid as costs incurred on account of seafaring subjects of Her Majesty left in distress in foreign parts.[1]

Whenever any case of death happens on board any foreign-going ship,—on the arrival of that ship at the port where the crew is discharged, the superintendent must inquire into the cause of such death, and must make, on the list of the crew delivered to him, as required by the Act,—an endorsement to the effect, either that the statement of the cause of death therein contained is, in his opinion, true or otherwise, as the result of the inquiry requires; and, for the purpose of this inquiry, every such superintendent has the powers given to inspectors appointed by the Board of Trade under the first part of the Act. If, in the course of this inquiry, it appears to him that any such death as aforesaid has been caused by violence or other improper means, he must either report the matter to the Board of Trade, or, if the emergency of the case requires, must take immediate steps for bringing the offender or offenders to justice.[2]

When, in the course of any legal proceedings, in any part of Her Majesty's dominions, before any judge or magistrate, or before any person authorised by law or by consent of parties to receive evidence, the testimony of any witness is required in relation to the subject-matter of such proceeding,—then, if such proceeding be instituted in the United Kingdom, upon due proof that that witness cannot be found in this kingdom, or, if in any British possession, upon due proof that he cannot be found in the same possession, any deposition he may have previously made on oath, in relation to the same subject-matter, before any justice or magistrate in Her Majesty's dominions, or any British consular officer elsewhere, is admissible in evidence, subject to the following restrictions:—

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[1] Sec. 268. [2] Sec. 269.

1. If such deposition was made in the United Kingdom, it is not admissible in any proceeding instituted in the United Kingdom.

2. If such deposition was made in any British possession, it is not admissible in any proceeding instituted in the same British possession.

3. If the proceeding is criminal, it is not admissible, unless it was made in the presence of the party accused.

And every deposition so made as aforesaid must be duly authenticated by the signature of the judge, magistrate, or consular officer, before whom the same is made, and, when the same is taken in a criminal matter, the judge, magistrate, or consular officer, must certify, if the fact be so, that the accused was present at the taking thereof; but it is not necessary, in any case, to prove the signature or official character of the person appearing to have signed any such deposition; and, in any criminal proceedings, this certificate is sufficient evidence of the accused having been present in the manner thereby certified, unless the contrary is proved. Nothing in the Act affects any case in which depositions taken in any proceeding are rendered admissible in evidence by any Act of Parliament, or by any Act or ordinance of the legislature of any colony, so far as regards that colony,—or to interfere with the power of any colonial legislature to make such depositions admissible as evidence,—or to interfere with the practice of any court, in which depositions not authenticated as before mentioned are admissible.[1]

Any officer in command of any ship of Her Majesty on any foreign station, or, in the absence of such officer, any consular officer, can summon a court, to be termed a "Naval Court," in the following cases:—

1. Whenever a complaint,—which appears to such officer to require immediate investigation,—is made to him by the captain of any British ship, or by any certified mate, or by one-third or more of the seamen belonging to the ship.

2. Whenever the interests of the owner of any British ship, or of the cargo thereof, appears to such officer to require it.

3. Whenever any British ship is wrecked, or abandoned, or otherwise lost, at or near the place where such officer is,—or whenever the crew or part of the crew of any British ship, which has been wrecked, abandoned, or lost abroad,—arrives at such place.[2]

Every Naval Court as aforesaid must consist of not more than five, and not less than three members,—of whom, if possible, one must be an officer in the naval service of Her Majesty, not below the rank of a lieutenant,—one, a captain of a British merchant ship, and the rest must be officers in the naval service of Her Majesty—captains of British merchant ships,—or, British merchants; and this court may include the naval or consular officer summoning the same, but must not include the captain or consignee of the ship to which the parties complaining or complained against belong. The naval or consular officer in that court,—if there is only one such in it,—or, if there is more than one, the naval or consular officer who, according to any regulations for settling their respective ranks in force for the time being, is of the highest rank, is to be the president of the court.[3]

Every Naval Court must hear and investigate the complaint brought

[1] Sec. 270. [2] Sec. 260. [3] Sec. 261.

before it, or the cause of the wreck or abandonment (as the case may be), and, for that purpose, can summon and compel the attendance of parties and witnesses,—administer oaths,—and order the production of documents,—and must conduct the investigation in such manner as to give any person against whom any charge is made an opportunity of making a defence.[1]

After hearing the case, this Naval Court can exercise the following powers :—

1. If unanimous that the safety of the ship or crew, or the interest of the owner, absolutely requires so, it can supersede the captain, and appoint another person to act in his stead; but no such appointment must be made without the consent of the consignee of the ship, if then at the place.

2. It can discharge any seaman from his ship.

3. It can order the wages of any seaman so discharged, or any part of such wages, to be forfeited, and can direct the same, either to be retained, by way of compensation to the owner, or to be paid into the receipt of Her Majesty's exchequer, in the same manner as other penalties and forfeitures under the Act.

4. It can decide any questions as to wages, fines, or forfeitures, arising between any of the parties to the proceedings.

5. It can direct that all or any of the costs incurred by the captain or owner of the ship,—in procuring the imprisonment of any seaman or apprentice in a foreign port,—or in his maintenance while imprisoned,—be paid out of and deducted from the wages of such seaman or apprentice, whether then or subsequently earned.

6. It can exercise the same powers,—with regard to persons charged before it with the commission of offences at sea or abroad,—as are given by the Act to British consular officers.

7. It can order the costs of the proceeding before it (if any), or any portion thereof, to be paid by any of the parties thereto, and can order any person making a frivolous or vexatious complaint to pay compensation for any loss or delay occasioned thereby; and any costs or compensation so ordered must be paid by such person accordingly, and can be recovered in the same manner in which the wages of seamen are recoverable,—or, if the case admits, can be deducted from his wages.

And all orders duly made by a Naval Court, under the powers given to it by the Act, are deemed, in any subsequent legal proceedings, conclusive as to the rights of the parties therein;[2] and, whenever practicable, all orders so made must be entered in the official log-book of the ship to which the parties to the proceedings before it belong, and must be signed by the president of the court.[3]

In addition to these powers, a Naval Court has power, by section 18 of the Act 18 and 19 Vict., cap. 91, to try the captain or any of the crew for any offences against the Merchant Shipping Act, 1854, for which, if tried in the United Kingdom, two justices would have power to convict summarily, and to inflict the same punishment which two justices might inflict upon summary conviction. But, when an offender is sentenced to imprisonment, this sentence must be confirmed in writing by the senior

[1] Sec. 262. [2] Sec. 263. [3] Sec. 264.

naval or consular officer present at the place where the court is held; and the place of imprisonment, whether on land or on board, must be approved by him as a proper place for the purpose;—and copies of all sentences by any Naval Court, summoned as aforesaid, must be sent to the commander-in-chief or senior naval officer of the station.

Every Naval Court must make a report to the Board of Trade, containing the following particulars:—

1. A statement of the proceedings, with the order made by the court, and a report of the evidence.

2. An account of the wages of any seaman or apprentice who is discharged from his ship by the court.

3. If summoned in order to inquire into a case of wreck or abandonment, a statement of the opinion of the court as to the cause of such wreck or abandonment, with such remarks on the conduct of the captain and crew as the circumstances require.

And this report must be signed by the president of the court. Every document purporting to be such a report and to be so signed,—if produced out of the custody of some officer of the Board of Trade,—is held to be such report, unless the contrary is proved, and is to be received in evidence, subject to all just exceptions.[1]

Any person who, wilfully and without due cause, prevents or obstructs the making of any such complaint as last mentioned, or the conduct of any case or investigation by any Naval Court for each such offence incurs a penalty not exceeding £50, or is liable to imprisonment, with or without hard labour, for any period not exceeding twelve weeks.[2]

XII.—POWER OF COMPLAINT AND PROTECTION.

If any seaman or apprentice, while on board ship, states to the captain that he desires to make complaint to any justice of the peace, or consular officer, or naval officer in command of any of Her Majesty's ships, against the captain or any of the crew,—if the ship is then at a place where there is a justice or consular officer, the captain must, so soon as the service of the ship will permit,—and if the ship is not then at such a place, so soon after her first arrival at such a place as the service of the ship will permit,—allow such seaman or apprentice to go ashore, or send him ashore in proper custody, so that he may be enabled to make such complaint; and, in default, the captain incurs a penalty not exceeding £10.[3]

No wages due or accruing to any seaman or apprentice are subject to attachment or arrestment from any court; and every payment of wages to a seaman or apprentice is valid in law, notwithstanding any previous sale or assignment of such wages,—or of any attachment, encumbrance, or arrestment thereon; and no assignment or sale of wages, or of salvage, made prior to the accruing (arising or earning) thereof, binds the party making the same. No power of attorney, or authority for the receipt of any such wages or salvage is irrevocable (unrecallable).[4] No debt exceeding in amount five shillings incurred by any seaman, after he has engaged to serve, is recoverable, until the service engaged for is concluded.[5]

If any person demands or receives from any seaman or apprentice to the

[1] Sec. 265. [2] Sec. 266. [3] Sec. 232. [4] Sec. 233. [5] Sec. 234.

sea-service payments, in respect of his board or lodging in the house of such person, for a longer period than that seaman or apprentice has actually resided or boarded therein, he incurs a penalty not exceeding £10.[1] If any person receives or takes into his possession or under his control any moneys, documents, or effects of any seaman or apprentice to the sea-service, and does not return the same, or pay the value thereof, when required by that seaman or apprentice,—subject to deduction of what may be justly due to him from the seaman or apprentice in respect of board or lodging or otherwise,—or absconds therewith,—he incurs a penalty not exceeding £10, over and above the amount or value of such moneys, documents, or effects, subject to such deduction as aforesaid, and this penalty must be forthwith paid to the seaman.[2]

Every person who, not being in Her Majesty's service, and not being duly authorised by law for the purpose, goes on board any ship about to arrive at the place of her destination, before her actual arrival in dock, or at the place of her discharge, without the permission of the captain,—he, for every such offence, incurs a penalty not exceeding £20; and the captain or person in charge of the ship can take into custody any such person so going on board, and deliver him forthwith to any constable or peace officer, to be taken by him before a justice or justices, or the sheriff of the county in Scotland, to be dealt with according to the provisions of the Merchant Shipping Act.[3]

If, within twenty-four hours after the arrival of any ship at any port in the United Kingdom, any person, then being on board, solicits any seaman to become a lodger at the house of any person letting lodgings for hire, or takes out of the ship any effects of any seaman, unless under his personal directions and with the permission of the captain, he, for every such offence, incurs a penalty not exceeding £5.[4]

XIII.—ALLOTMENT OF WAGES, AND RELIEF TO SEAMEN'S FAMILIES.

All stipulations for the allotment of any part of the wages of a seaman during his absence, which are made at the commencement of a voyage, must be inserted in the agreement, and must state the amounts, and the times of the payments to be made; and all allotment notes must be in forms sanctioned by the Board of Trade.[5]

Unless the seaman is shown, in manner after mentioned, to have forfeited, or ceased to be entitled to, the wages out of which the allotment is to be paid, and subject, as to the wife, to the provision after stated,—the wife, or the father or mother, or the grandfather or grandmother, or any child or grandchild, or any brother or sister of the seaman, in whose favour an allotment note of part of his wages is made, can now sue for and recover the sums allotted by the note, when and as the same are made payable, with costs from the owner or any agent who has authorised the drawing of the note, either in the County Court, or in the summary manner in which seamen are, by the Act, enabled to sue for and recover wages not exceeding £50; and in any such proceeding, it is sufficient for the claimant to prove that he or she is the person mentioned in the note, and that the note was given by the owner or by the captain, or some other

[1] Sec. 235. [2] Sec. 236. [3] Sec. 237. [4] Sec. 238. [5] Sec. 168.

authorised agent. The seaman is presumed to be duly earning his wages, unless the contrary is shown to the satisfaction of the court, either by the official statement of the change in the crew caused by his absence, made and signed by the captain, as required by the Act, or by a duly certified copy of some entry in the official log-book, to the effect that he has left the ship, or by a credible letter from the captain of the ship to the same effect,—or by such other evidence, of whatever description, as the court, in its absolute discretion, considers sufficient to show, satisfactorily, that the seaman has ceased to be entitled to the wages out of which the allotment is to be paid. And the wife of any seaman who deserts her children, or so misconducts herself as to be undeserving of support from her husband, thereupon forfeits all right to the payment of any allotment of his wages made in her favour.[1]

An advance-note in the following terms was given to a seaman:—"Ten days after the ship A. sails from the port of C., the undersigned promises and agrees to pay to any person who shall advance to R. H., on this agreement, the sum of £8, provided R. H. shall sail in the ship from the port of Liverpool." For this note an outfitter gave the seaman £3, 15s. in cash and £2, 15s. value of wearing clothes; and the seaman having sailed with the ship, it was held that the condition upon which the holder of the note was entitled to payment of it was substantially fulfilled by giving the seaman its amount in money and money's worth.[2]

Whenever, during the absence of any seaman on a voyage, his wife, children, and step-children, or any of them, become chargeable to any union or parish in the United Kingdom, that union or parish is entitled to be reimbursed out of the wages of such seaman, earned during said voyage, any sums properly expended, during his absence, in the maintenance of his said relations, or any of them, so that such sums do not exceed the following proportions of his wages:—

If only *one* of such relations is chargeable,—one-half of his wages.

If two or more of such relations are chargeable,—two-thirds of his wages.

But if, during the absence of the seaman, any sums have been paid to or on behalf of any relation as aforesaid, under an allotment note given by the seaman in his, her, or their favour, any such claim for reimbursement must be limited to the excess (if any) of the proportion of the wages before mentioned over the sums so paid.[3]

For the purpose of obtaining this reimbursement, the guardians of the union or parish, where the relief of the poor is administered by guardians, and the overseers of the poor of any other parish in England or Ireland, or the inspector of the poor in Scotland, can give a notice in writing to the owners of the ship in which the seaman is serving, stating the proportion of the seaman's wages upon which it is intended to make the claim, and requiring the owner to retain this proportion in his hands for a period to be therein mentioned, not exceeding twenty-one days from the time of the seaman's return to his port of discharge, and also requiring the owner, immediately on such return, to give notice in writing to the guardians, overseers, or inspector; and, after receiving such notices as aforesaid, the owner is bound to retain the said proportion of wages, and to give notice

[1] Sec. 169. [2] M'Kane *v.* Joynson, 4 Jur. *n. s.* 760. [3] Sec. 192.

of the seaman's return accordingly, and must likewise give the seaman notice of the intended claim.[1]

Upon the seaman's return, the guardians, overseers, or inspector can apply, in a summary way, in England or Ireland, to any two justices having jurisdiction in such union or parish, and in Scotland, to the sheriff of the county, for an order for reimbursement to the whole extent foresaid, or to such lesser amount as he or they may, under the circumstances, think fit; and the owner must pay to such guardians, overseers, or inspector, out of the seaman's wages, the amount so ordered to be paid by way of reimbursement, and the remainder of the wages to the seaman. But if no such order is obtained within the period mentioned in the notice to be given to the owner as aforesaid, the proportion of wages so retained by him is payable to the seaman immediately on the expiration of such period, and without deduction.[2]

XIV.—LEAVING SEAMEN ABROAD.

When any British ship is transferred or disposed of at any place out of Her Majesty's dominions, and any seaman or apprentice belonging thereto does not, in presence of some British consular officer, or, if there is no consular officer there, in the presence of one or more respectable British merchants residing at the place, and not interested in the ship, signify his consent, in writing, to complete the voyage, if continued,—and when the service of any seaman or apprentice belonging to any British ship terminates at any place out of Her Majesty's dominions,—the captain must give to each such seaman or apprentice a certificate of discharge in the form sanctioned by the Board of Trade; and in the case of any certified mate, whose certificate he has retained, must return his certificate to him; and, besides paying the wages to which such seaman or apprentice is entitled, must also either provide him with adequate employment on board some other British ship, bound to the port in Her Majesty's dominions at which he was originally shipped, or to such other port in the United Kingdom as is agreed upon by him, or furnish the means of sending him back to such port, or provide him a passage home, or deposit with said consular officer, or merchant or merchants, as aforesaid, such a sum of money as is, by that officer or these merchants, deemed sufficient to pay the expenses of his subsistence and passage home; and the consular officer or merchants endorse upon the agreement of the ship which the seaman or apprentice is leaving the particulars of this payment, provision, or deposit.[3]

If the captain refuses or neglects to comply with the above requirements, the expenses as last aforesaid, if defrayed by the consular officer, or by any other person, are (unless the seaman or apprentice has been guilty of barratry[4]) a charge upon the ship to which that seaman or apprentice belonged, and upon the owner thereof for the time being, and can be recovered against the owner, with costs, at the instance of the consular officer, or other person defraying these expenses, or, in case the same has been allowed to the consular officer out of the public moneys, as a debt due to Her Majesty, either by ordinary process of law, or in the manner

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[1] Sec. 193. [2] Sec. 193. [3] Sec. 205. [4] See tit. *Barratry*.

seamen are entitled to recover wages; and if defrayed by the seaman or apprentice himself, such expenses are recoverable as wages due to him.[1]

If the captain, or any other person belonging to any British ship, wrongfully forces on shore, and leaves behind, or otherwise wilfully or wrongfully leaves behind, in any place, on shore or at sea, in or out of Her Majesty's dominions, any seaman or apprentice belonging to that ship, before the completion of the voyage for which such person was engaged, or the return of the ship to the United Kingdom,—he for each such offence is deemed guilty of a misdemeanour.[2]

If the captain of any British ship does any of the following things, he, for each such default, is also deemed guilty of a misdemeanour:—

1. Discharges any seaman or apprentice in any place in any British possession abroad (except the possession in which he was shipped), without previously obtaining the sanction in writing, endorsed on the agreement, of some public superintendent, or other officer duly appointed by the local government in that behalf, or (in the absence of any such functionary) of the chief officer of customs resident at or near the place where the discharge takes place.

2. Discharges any seaman or apprentice at any place out of Her Majesty's dominions without previously obtaining the sanction, endorsed as aforesaid, of the British consular officer there, or (in his absence) of two respectable merchants there.

3. Leaves behind any seaman or apprentice at any place in any British possession abroad, on any ground whatever, without previously obtaining a certificate in writing, endorsed as aforesaid, from such officer or person as aforesaid, stating the facts and the cause thereof,—whether the cause be unfitness or inability to proceed to sea, or desertion or disappearance.

4. Leaves behind any seaman or apprentice at any place *out of* Her Majesty's dominions, on shore or at sea, on any ground whatever, without previously obtaining the certificate, endorsed in manner and to the effect foresaid, by the British consular officer there, or (in his absence) by two respectable merchants, if there be any such, at or near the place where the ship then is.

And these functionaries must, and the merchants may, examine into the grounds of the proposed discharge, or into the allegation of such unfitness, inability, desertion, or disappearance, in a summary way, and can, for that purpose, if they think fit so to do, administer oaths, and either grant or refuse such sanction or certificates, as appears to them just.[3]

Upon the trial of any information, indictment, or other proceeding against any person for discharging or leaving behind any seaman or apprentice, contrary to the provisions of the Act, it lies with that person either to produce the certificate or sanction before required, or to prove that he had obtained the same previously to having discharged or left behind the seaman or apprentice, or that it was impracticable for him to obtain such sanction or certificate.[4]

Every captain of any British ship who leaves any seaman or apprentice at any place abroad, in or out of Her Majesty's dominions, under a certificate of his unfitness or inability to proceed on the voyage, must deliver

[1] Sec. 205. [2] Sec. 206. [3] Sec. 207. [4] Sec. 208.

to one of the functionaries before mentioned, or (in the absence of these functionaries) to the merchants by whom the certificate is signed, or, if there be but one respectable merchant resident at that place, to him, a full and true account of the wages due to that seaman or apprentice,—this account, when delivered to a consular officer, being in duplicate,—and he must pay the same, either in money or by bill drawn on the owner; and in the case of every bill so drawn, the functionary, merchants, or merchant as aforesaid, by endorsement, certify thereon that the same is drawn for money due on account of a seaman's wages, and also endorse the amount for which the bill is drawn, with such further particulars of the case as the Board of Trade requires upon the agreement of the ship. Every captain, as aforesaid, who refuses or neglects to deliver a full account of such wages, and pay the amount thereof in money or by bill as before required, he, for every such offence or default, is liable, in addition to payment of the wages, to a penalty not exceeding £10; and every captain who delivers a false account of the wages, for every such offence incurs, in addition to the payment of the wages, a penalty not exceeding £20.[1]

The payment, wherever practicable, is to be made in money, and not by bill; if made by bill, the owner is liable to pay the amount to the holder; and in any proceeding against the owner upon such bill, it is not necessary to prove that the master had authority to draw; and any bill purporting to be drawn in pursuance of the last-mentioned section (209th) of the principal Act, and to be endorsed as therein required, if produced out of the custody of the Board of Trade or of the Registrar-General of Seamen, or of any superintendent of any Mercantile Marine Office, is to be received in evidence; and the endorsement on any such bill purporting to be made in pursuance of the said section, and to be signed by one of the functionaries therein named, is also to be received in evidence, and is to be deemed *prima facie* evidence of the facts stated in such endorsement (Merchant Shipping Act Amendment Act, 1862, 25 and 26 Vict., cap. 63, sec. 19).

Every payment as now mentioned, whether by bill or in money, if made in any British possession, must be made to the seaman or apprentice himself, and, if made out of Her Majesty's dominions, to the consular officer, who, if satisfied with the account, endorses on one of the duplicates thereof a receipt for the amount paid or bill delivered, and returns the same to the captain; and within forty-eight hours after his return to his port of destination in the United Kingdom, the captain must deliver the same to the superintendent there; and the consular officer retains the other duplicate of the account, and if the seaman obtains employment at, or otherwise quits, the port, deducts out of the sum received by him as aforesaid any expenses which have been incurred by him in respect of the subsistence of the seaman or apprentice, under the foregoing provisions, except such as the captain or owner of the ship is, by the Act, required to pay, and he pays the remainder to the seaman or apprentice, and also delivers to him an account of the sums so expended on his behalf. If the seaman or apprentice dies before the ship quits the port, the consular officer deals with the same in the manner after specified; and if the seaman or apprentice is sent home at the public expense, under the foregoing

[1] Sec. 209.

provisions, he accounts for the sums received to the Board of Trade, and, after deducting any expenses which have been duly incurred in respect of that seaman or apprentice (except such as, by the Act, the captain or owner is required to pay), the amount must be dealt with as wages to which he is entitled, and must be paid accordingly.[1]

The governors, consular officers, and other officers of Her Majesty in foreign countries, must,—and in places where there are no such governors or officers, any two British resident merchants may,—provide for the subsistence of all seamen or apprentices, being subjects of Her Majesty, who have been shipwrecked, discharged, or left behind, at any place abroad, whether from any ship employed in the merchant service, or from any of Her Majesty's ships, or who have been engaged by any person, acting either as principal or agent, to serve in any ship belonging to any foreign power, or to the subjects of any foreign state, and who are in distress in any place abroad, until they are able to provide them with a passage home; and, for that purpose, can cause such seamen or apprentices to be put on board some ship, belonging to any subject of Her Majesty, bound to any port in the United Kingdom, or to the British possession to which they belong (as the case requires), which is in want of men to make up its complement;—and, in default of any such ship, can provide them with a passage home, as soon as possible, in some ship belonging to a subject of Her Majesty, bound as aforesaid, and can endorse on the agreement of any ship on board of which any seaman or apprentice is so taken or sent the name of every person so sent on board thereof, with such particulars concerning the case as the Board of Trade requires; and, for the subsistence of any such seaman or apprentice, he is allowed such sum per day as the Board of Trade from time to time appoints. The amount due in respect of such allowance is paid out of any moneys applicable to the relief of distressed British seamen, and granted by Parliament for the purpose, on the production of the bills of the disbursements, with the proper vouchers.[2]

The captain of every British ship bound as aforesaid must receive and afford a passage and subsistence to all seamen or apprentices whom he is required to take on board his ship under the foregoing provisions, not exceeding one for every fifty tons burden, and, during the passage, must provide every such seaman or apprentice with a proper berth or sleeping place, effectually protected against sea and weather. On the production of a certificate signed by any governor, consular officer, or merchants, by whose directions any such seaman or apprentice was received on board,—stating the number and names of such seamen or apprentices, and the time when each of them respectively was received on board,—and on a declaration, made by such person before a justice, and verified by the Registrar-General of Seamen, stating the number of days during which each seaman or apprentice received subsistence, and was provided for as aforesaid on board his ship, and also stating the number of men and boys forming the complement of his crew, and the number of seamen and apprentices employed on board his ship during such time, and every variation (if any) of such number, he is entitled to be paid out of the moneys applicable to the relief of *distressed* British seamen such sum per

[1] Sec. 210. [2] Sec. 211.

day as the Board of Trade from time to time appoints in respect of the subsistence and passage of every seaman or apprentice so conveyed, subsisted, and provided for by him, exceeding the number (if any) wanted to make up the complement of his crew; and if any person having charge of any British ship fails or refuses to receive on board his ship, or to give a passage home, or subsistence to, or to provide for, any seaman or apprentice as aforesaid, contrary to the provisions of the Act, he incurs a penalty not exceeding £100 for each seaman or apprentice with respect to whom he makes such default or refusal.[1]

Under these two sections, the Board of Trade can issue instructions in regard to the relief to be afforded to distressed seamen and apprentices, and, by these, can determine in what cases and under what circumstances and conditions, that relief is to be afforded;[2] and the claims of seamen to be relieved and sent home, in consequence of these two sections, or either of them, are subject to such regulations and dependent on such conditions as the Board of Trade from time to time make or impose; and no seaman has any right to demand to be relieved or sent home, unless in the cases and to the extent provided for by these regulations and conditions.[3]

If any seaman or apprentice belonging to any British ship is discharged or left behind at any place out of the United Kingdom, without full compliance on the part of the captain with all the provisions in that behalf in the Merchant Shipping Act, and becomes distressed, and is relieved under the provisions of that Act,—or if any subject of Her Majesty, after having been engaged by any person (whether acting as principal or agent) to serve in any ship belonging to any foreign power, or to the subject of any foreign power,—becomes distressed and is relieved as aforesaid, the wages (if any) due to such seaman or apprentice, in case he should die abroad before reaching home, are a charge upon the ship, whether British or foreign, to which he belonged, as aforesaid.[4]

The Board of Trade can, in the name of Her Majesty (besides suing for any penalties incurred), sue for and recover the said wages and expenses, with costs, either from the captain of the ship, or from the person who is owner thereof for the time being,—or, in the case of engagement for service in a foreign ship, from the captain or owner, or from the person by whom that engagement was made; and these sums are recoverable in the same manner as other debts due to Her Majesty, or in the same manner, and by the same form and process, as wages due to the seaman may be recoverable by him. In any proceedings for that purpose, production of the account (if any) to be furnished as before provided in such cases, with proof of payment, by the Board of Trade, or by the Paymaster-General, of the charges incurred on account of any such seaman, apprentice, or other person, is sufficient evidence that he was relieved, conveyed home, or buried (as the case may be), at Her Majesty's expense.[5]

All the powers given by this section to the Board of Trade of recovering expenses incurred with respect to distressed seamen and apprentices, extend to all expenses incurred by a foreign Government for these purposes, and repaid to that Government by Her Majesty's Government, and also to the expenses incurred in conveying home all such seamen and

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[1] Sec. 212.
[2] 18 and 19 Vict., cap. 91, sec. 16.
[3] 25 and 26 Vict., cap. 63, sec. 22.
[4] Sec. 213.
[5] Ibid.

apprentices in foreign as well as in British ships: and all these provisions as to the relief of distressed seamen and apprentices, *subjects of Her Majesty*, are extended to seamen and apprentices *not subjects of Her Majesty*, who are reduced to distress in foreign ports, by having been shipwrecked, discharged, or left behind from a British ship; but, under such modifications and directions, as to the relief to be given to such foreigners and the country to which they are to be sent, as, under the circumstances, the Board of Trade thinks fit.[1]

XV.—WAGES AND EFFECTS OF DECEASED SEAMEN.

When a seaman, belonging to or sent home in any British ship (foreign-going or home-trade), employed on a voyage which is to end in the United Kingdom, dies during such voyage, the captain must take charge of all money, clothes, and effects which he leaves on board; and, if he thinks fit, can cause all, or any, of these clothes and effects to be sold by auction, at the mast or other public auction, and thereupon he signs an entry in the official log-book, containing the following particulars:—

1. A statement of the amount of the money, and a description of the effects, so left by the deceased.

2. In the event of a sale, a description of each article sold, and the sum received for each.

3. A statement of the sum due to the deceased as wages, and the total amount of the deductions (if any) to be made therefrom.

And the captain must cause this entry to be attested by a mate and by one of the crew.[2]

In the cases provided for by the foregoing section, the following rules must be observed:—

1. If the ship proceeds at once to any port in the United Kingdom, without touching on the way at any foreign port, the captain must, within forty-eight hours after his arrival, deliver any effects remaining unsold, and pay any money he has taken charge of, or received from such sale as aforesaid, and also the balance of wages due to the deceased, to the superintendent at the port of destination in the United Kingdom.

2. If the ship touches and remains for forty-eight hours at some foreign port, or at some port in Her Majesty's dominions abroad, before coming to any port in the United Kingdom, the captain must report the case to the British consular officer, or officer of customs there, and must give to that officer any information he requires as to the destination of the ship and probable length of the voyage. Thereupon, the officer can, if he considers it expedient, require the effects, money, and wages, to be delivered and paid to him, and, upon such delivery and payment, he gives to the captain a receipt; and, within forty-eight hours after his arrival at his port of destination in the United Kingdom, the captain must produce this receipt to the superintendent there; and, in such case, the consular officer or officer of customs endorses and certifies upon the agreement with the crew such particulars with respect to the delivery and payment as the Board of Trade requires.

3. If the foresaid officer does not require payment and delivery to be

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[1] 18 and 19 Vict., cap. 91, sec. 16. [2] 17 and 18 Vict., cap. 104, sec. 194.

made to him, the captain must take charge of the said effects, money, and wages, and, within forty-eight hours after his arrival at his port of destination in the United Kingdom, he must pay and deliver the same to the superintendent there.

4. In all cases in which a seaman or apprentice dies during the progress of a voyage or engagement, the captain must give to the Board of Trade, or the officer or superintendent aforesaid, an account, in such form as they respectively require, of the effects, money, and wages, so to be delivered and paid; and no deductions claimed in such account can be allowed, unless verified, if there is any official log-book, by such entry therein as before required; and also by such other vouchers (if any) as may be reasonably required by the Board of Trade, or by the officer to whom the account is rendered.

5. Upon due compliance with such of the provisions of this section as relate to acts to be done at the port of destination in the United Kingdom, the superintendent grants to the captain a certificate to that effect; and no officer of customs can clear inwards any foreign-going ship without the production of such certificate.[1]

If any captain fails to take charge of the money or other effects of a seaman or apprentice dying during a voyage, or to make the entries in respect thereof as before required, or to procure the foregoing attestation to these entries, or to make payment or delivery, as before directed, of any money, wages, or effects of any seaman or apprentice dying during a voyage, or to give an account thereof as before respectively directed, he must be accountable for the money, wages, and effects of the seaman or apprentice to the Board of Trade, and must pay and deliver the same accordingly. In addition, the captain incurs, for every such offence, a penalty not exceeding treble the value of the money or effects not accounted for, or, if such value is not ascertained, not exceeding £50; and if any such money, wages or effects, are not duly paid, delivered, or accounted for by the captain, the owner of the ship must pay, deliver, and account for the same, and such money and wages, and the value of such effects, are recoverable from him accordingly. If he fails to account for and pay the same,—he, in addition to his liability for the said money and value, incurs the same penalty before mentioned as incurred by the captain for the like offence; and all money, wages, and effects of any seaman or apprentice dying during a voyage are recoverable in the same courts, and by the same mode of proceeding, by which seamen recover their wages.[2]

If any seaman or apprentice dies abroad, at any place, either in or out of Her Majesty's dominions, leaving any money or effects *not on board* his ship, the chief officer of customs, or the British consular officer at or nearest to the place, claims and takes charge of such money and effects, and that officer can, if he thinks fit, sell all or any of these effects, or any effects of any deceased seaman or apprentice delivered to him under the provisions before mentioned. Each officer must, quarterly, or at such other times as the Board of Trade directs, remit to Her Majesty's Paymaster-General all moneys belonging to or arising from the sale of the effects of, or paid as the wages of, any deceased seamen or apprentice which have come to his hands under the provisions of the Merchant

[1] Sec. 195. [2] Sec. 196.

Shipping Act, and must render such accounts in respect thereof, as the Board of Trade requires.[1] And by section 20 of the 25 and 26 Vict., cap. 63, the above section is extended to seamen and apprentices, who, within the six months immediately preceding their death, have belonged to a British ship.

When any seaman or apprentice dies in the United Kingdom, and is, at the time of his death, entitled to claim, from the captain or owner of the ship in which he has served, any unpaid wages or effects,—the captain or owner must pay and deliver, or account for the same, to the superintendent at the port where the seaman or apprentice was discharged, or was to have been discharged, or to the Board of Trade, or as it directs.[2]

If the money and effects of any deceased seaman or apprentice, paid, delivered, or remitted to the Board of Trade or its agents, including the moneys received for any part of the effects which have been sold, either before delivery to the Board of Trade or by its directions, do not exceed in value the sum of £50, then, subject to the provisions after mentioned, and to all such deductions incurred in respect of the seaman or apprentice, or of his money and effects, as the Board thinks proper to allow, the Board can, if it thinks fit, pay and deliver the said money and effects, either to any claimants who can prove themselves, to the satisfaction of the Board, to be his widow or children,—or to be entitled to the effects of the deceased under his will (if any),—or under the statutes for the distribution of the effects of intestates,—or under any other statute, or at common law,—or to be entitled to procure probate,—or to take out letters of administration or confirmation, although no probate or letters of administration or confirmation have been taken out;—and the Board is thereby discharged from all further liability in respect of the money and effects so paid and delivered; or, the Board can require probate or letters of administration or confirmation to be taken out, and, thereupon, pay and deliver the money and effects to the legal personal representatives of the deceased; and all claimants to whom such money or effects are paid or delivered must apply the same in due course of administration. If the money and effects exceed in value £50, then, subject to the provisions after mentioned, and to deduction for expenses, the Board of Trade pay and deliver the same to the *legal personal representatives of the deceased.*[3]

When the deceased seaman or apprentice has left a will, the Board of Trade has the following powers:—

1. It may, in its discretion, refuse to pay or deliver any wages or effects as aforesaid to any person claiming to be entitled thereto under a will made on board ship, unless such will is in writing, and is signed or acknowledged by the testator in presence of the captain, or first or only mate of the ship, and is attested by the captain or mate.

2. It may, in its discretion, refuse to pay or deliver any such wages or effects to any person, not being related to the testator by blood or marriage, who claims to be entitled thereto under a will *made elsewhere than on board ship*, unless such will is in writing, and is signed or acknowledged by the testator in the presence of two witnesses, one of whom is some superintendent appointed under the Act, or some minister, or officiating minister, or curate of the place in which the same is made, or, in a place

[1] Sec. 197. [2] Sec. 198. [3] Sec. 199.

where there are no such persons, some justice of the peace, or some British consular officer, or some officer of the customs, and is attested by such witnesses.

And when any claim made under a will is rejected by the Board of Trade, on account of the will not being made and attested as before required, the wages and effects of the deceased must be dealt with as if no will had been made.[1]

The following rules must be observed with respect to creditors of deceased seamen and apprentices :—

1. No creditor is entitled to claim from the Board of Trade the wages or effects of any seaman or apprentice, or any part thereof, by virtue of letters of administration taken out by him, or by virtue of confirmation in Scotland as executor creditor.

2. No creditor is entitled, by any means whatever, to payment of his debt out of such wages and effects, if the debt was contracted more than three years before the death of the deceased, or if the demand is not made within two years after that death.

3. Subject as aforesaid, the steps to be taken for procuring payment of such debt must be as follows :—Every person making a demand as creditor, must deliver to the Board of Trade an account, in writing, in such form as the Board requires, subscribed with his name, stating the particulars of his demand, and the place of his abode, and verified by his declaration made before a justice.

4. If, before such demand is made, any claim to the wages and effects of the deceased,—made by any person interested therein, as his widow or child, or under a will, or under the statutes for the distribution of the effects of intestates, or under any other statute, or at common law,—has been allowed, the Board of Trade gives notice to the creditor of the allowance of that person's claim, and thereupon the creditor has the same rights and remedies against that person as if he or she had received the wages and effects as the legal personal representative of the deceased.

5. If no claim by any such person has been allowed, the Board of Trade proceeds to investigate the creditor's accounts, and can, for that purpose, require him to prove the same, and to produce all books, accounts, vouchers, and papers relating thereto ; and if, by these means, the creditor duly satisfies the Board of Trade of the justice of the demand, either in whole or in part, the same is allowed and paid accordingly, so far as the means and effects in the hands of the Board extend for that purpose, and such payment discharges the Board from all further liability in respect of the money so paid ; but if the Board is not so satisfied, or if the books, accounts, vouchers, or papers as aforesaid are not produced, and no sufficient reason is assigned for not producing them, the demand will be refused.

6. In any case the Board of Trade can delay the investigation of any demand made by a creditor for the payment of his debt for one year from the time of the first delivery of the demand ; and if, in the course of that time, a claim to the wages and effects of the deceased is made and substantiated as before required, by any person interested therein as a widow or child, or under a will, or under the statutes for the distribution of the effects of intestates, or under any other statute, or at common law,—the

[1] Sec. 200.

Board of Trade can pay and deliver the same to such person; and, thereupon, the creditor has the same rights and remedies against that person as if he or she had received the same as legal personal representative of the deceased.[1]

The wages of seamen or apprentices *who have been lost with their ship* are treated as follows:—

1. The Board of Trade can recover these from the owner, in the same manner as seamen's wages are recoverable.

2. If it is shown in the proceedings for recovering such wages, by some official return of the Registrar-General of Seamen, or by some other evidence, that the ship has left a port of departure twelve months or upwards before the commencing of such procedure, and if it is not shown that she has been heard of within twelve months after this departure, she is to be held to have been lost with all hands.

3. The duplicate agreement or list of the crew at the ship's last departure from the United Kingdom, or a certificate from a consular or other public officer at any port abroad, that certain seamen or apprentices were shipped in the ship from that port, is sufficient proof, in the absence of proof to the contrary, that the seamen or apprentices named were on board at the time of the loss.

4. The Board of Trade deals with these wages the same as with the wages of other deceased seamen and apprentices, as aforesaid.[2]

In cases of wages or effects of deceased seamen or apprentices, received by the Board of Trade, to which no claim is substantiated within six years after the receipt thereof by the Board, it is in the absolute discretion of the Board,—if any subsequent claim is made,—to allow or to refuse the same: —and, subject to the provision after mentioned, the Board of Trade, from time to time, pay any moneys arising from the unclaimed wages and effects of deceased seamen,—which, in the opinion of the Board, it is not necessary to retain for the purpose of satisfying claims,—into the receipt of Her Majesty's exchequer, in such a manner as the Treasury directs, and these moneys are carried to and form part of the Consolidated Fund of the United Kingdom.[3]

Every person who, for the purpose of obtaining, either for himself or for another, any money or effects of any deceased seaman or apprentice, forges, assists in forging, or procures to be forged,—or who fraudulently alters, assists in fraudulently altering, or procures to be fraudulently altered, —any document purporting to show, or assist in showing, a right to such wages or effects,—and every person who, for the purpose aforesaid, makes use of any such forged or altered document,—or who, for the purpose aforesaid, gives or makes, or procures to be given or made, or assists in giving or making, or procuring to be given or made,—any false evidence or representation,—knowing the same to be false,—such person is punishable with penal servitude, for a term not exceeding four years,—or with imprisonment, with or without hard labour, for any period not exceeding two years,—or, if summarily prosecuted and convicted, by imprisonment, with or without hard labour, for any period, not exceeding six months.[4]

In the case of seamen invalided or discharged from any of Her Majesty's

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[1] Sec. 201.
[2] 25 and 26 Vict, cap. 63, sec. 21.
[3] 17 and 18 Vict., cap. 104, sec. 202.
[4] Sec. 203.

ships, and sent home in merchant ships, any moneys or effects belonging to them, which are paid, remitted, or delivered to the Board of Trade, or its agents, under the before-mentioned provisions, must be paid over and disposed of in such manner as the Accountant-General of Her Majesty's navy directs.[1]

XVI.—REMITTANCE OF WAGES, AND SAVINGS' BANKS FOR SEAMEN.

If the Board of Trade so directs, facilities can be given for remitting the wages and other moneys of seamen and apprentices to their relatives or other persons, by means of money-orders issued by superintendents; and the Board of Trade can make regulations concerning such orders, and the persons by or to whom, and the mode and time in and at which, the same are to be paid, and can from time to time repeal or alter any such regulations;—and all these regulations, so long as they are in force, are binding upon all persons interested, or claiming to be interested, in such orders, as well as upon the officers employed in issuing or paying the same; and no legal proceedings can be instituted against the Board of Trade, or against any superintendent or other public officer employed about such orders, on account of any such regulations, or on account of any act done or left undone in consequence thereof, or on account of any refusal, neglect, or omission to pay any such money-order, unless this refusal, neglect, or omission arise from fraud or wilful misbehaviour on the part of the person against whom proceedings are instituted.[2]

In any case in which it thinks fit to do so, the Board of Trade can cause the amount of any such money-order to be paid to the person to whom or in whose favour the same has been granted, or to his personal representatives, legatees, or next of kin, notwithstanding such order may not be in his or their possession; and, in all such cases, the Board of Trade, and every superintendent or other officer of the Board, is freed, from and after such payment, from all liability in respect of such order.[3]

Every superintendent or other public officer, who grants or issues any money-order with a fraudulent intent, is held, in England or Ireland, to be guilty of felony, and, in Scotland, of a high crime and offence, and is liable to be kept in penal servitude for a term not exceeding four years.[4]

The Commissioners for the Reduction of the National Debt, or the Comptroller-General acting under them, can, on the application and recommendation of the Board of Trade, establish savings' banks at such ports and places in the United Kingdom, either in the shipping offices in such ports, or elsewhere, as may appear to be expedient, and can appoint treasurers to receive from or on account of seamen, or the wives and families of seamen, desirous to become depositors in such savings' banks,—deposits to an amount not exceeding £150 in the whole, in respect of any one account, under such regulations as may be prescribed by the Commissioners or Comptroller-General,—which regulations are binding on all such treasurers and depositors; and the Commissioners can remove such treasurers, and appoint others in their place: and all the provisions of the Acts now in force relating to savings' banks, except so far as relates to the annual

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[1] Sec 204. [2] Sec. 177. [3] Sec. 178. [4] Sec. 179.

amount of deposits, apply to all savings' banks established under authority of the Act, and to such treasurers and depositors as aforesaid.[1]

And now, under the provisions of the Seamen's Savings' Bank Act, 1856, 19 and 20 Vict., cap. 41, the Board of Trade themselves may establish in London, and at other ports in the United Kingdom, savings' banks for the use of seamen; and for the purposes of the Act they may constitute any shipping office, established under the Merchant Shipping Act, 1854, a branch bank. The Board from time to time make regulations subject to which the deposits are received, and they also fix the interest payable upon the deposits. The maximum amount received in the name of any one depositor is £200.

XVII.—PAYMENT OF WAGES AND DISCHARGE.

The captain or owner of every ship must pay his wages to every seaman within the respective periods following:—In the case of a home-trade ship, within two days after the termination of the agreement, or at the time when such seaman is discharged, whichever first happens; and, in the case of all other ships (except ships employed in the southern whale-fishery, or on other voyages for which seamen, by the terms of their agreement, are wholly compensated by shares in the profits of the adventure), within three days after the cargo has been delivered, or within five days after the seaman's discharge, whichever first happens; and, in all cases, the seaman is entitled, at the time of his discharge, to be paid, on account, a sum equal to one-fourth part of the balance due to him. Every captain or owner who, without sufficient cause, neglects or refuses to make payment in manner foresaid, must pay to the seaman a sum, not exceeding the amount of two days' pay, for each of the days, not exceeding ten, during which payment is delayed beyond the above respective periods, and this sum is recoverable as wages.[2]

In the case of all British foreign-going ships, in whatever part of Her Majesty's dominions the same are registered, all seamen discharged in the United Kingdom must be discharged and receive their wages in the presence of a superintendent, duly appointed under the Merchant Shipping Act, unless in cases where some competent court otherwise directs; and any captain or owner who discharges any seaman belonging to his ship, or, unless as aforesaid, pays his wages within the United Kingdom in any other manner, incurs a penalty not exceeding £10. In the case of home-trade ships, seamen may, if the owner so desires, be discharged and receive their wages in like manner.[3]

But it has been held, that this payment before a superintendent is no satisfaction of wages for which a judgment has been obtained in the Court of Admiralty.[4]

Not less than twenty-four hours before paying off or discharging any seaman, every captain must deliver to him, or, if he is to be discharged before a superintendent, to that officer, a full and true account, in the form sanctioned by the Board of Trade, of his wages, and all deductions to be made therefrom on any account whatever,—and, in default, he, for each offence, incurs a penalty not exceeding £5; and no deduction from the wages of

[1] Sec. 180. [2] Sec. 187. [3] Sec. 170. [4] *The Araminta*, 1 Swabey, 81.

any seaman (unless in respect of any matter happening after such delivery) can be allowed, unless it is included in the account so delivered; and, during the voyage, the captain must enter the various matters, in respect of which such deductions are made, with the amounts of the respective deductions, as they occur, in a book to be kept for that purpose, and must, if required, produce this book at the time of the payment of wages, and also upon the hearing, before any competent authority, of any complaint or question relating to such payments.[1]

Upon the discharge of any seaman, or upon payment of his wages, the captain must sign and give him a certificate of his discharge, in the form sanctioned by the Board of Trade, specifying the period of his service, and the time and place of his discharge; and if any captain fails to sign and give to any seaman so discharged such certificate of discharge, he, for each such offence, incurs a penalty not exceeding £10. Upon the discharge of every certified mate, whose certificate of competency or service has been delivered to and retained by the captain, he must also return such certificate, and in default he incurs a penalty not exceeding £20.[2]

Every superintendent must hear and decide any question whatever between a captain or owner and any of his crew, which both parties agree *in writing* to submit to him, and every award so made by him is binding on both parties, and in any legal proceedings in the matter before any court of justice, this award is deemed to be conclusive as to the rights of the parties. This submission or award requires no stamp; and any document, purporting to be such a submission or award, is *primâ facie* evidence thereof.[3]

In any proceeding relating to the wages, claims, or discharge of any seaman, before any superintendent under the foregoing provisions, the superintendent can call upon the owner or his agent, or upon the captain, or any mate, or other member of the crew, to produce any log-books, papers, or other documents in their respective possession or power, relating to any matter in question, and can call before him and examine any of these persons, being then at or near the place, on any such matter. Every owner, agent, captain, mate, or other member of the crew, who, when called upon by the superintendent, does not produce any such paper or document as aforesaid, if in his possession or power, or who does not appear and give evidence, incurs for each such offence—unless he shows some reasonable excuse for his default—a penalty not exceeding £5.[4]

The following rules must be observed with respect to the settlement of wages:—

1. Upon the completion, before a superintendent, of any discharge and settlement, the captain or owner and each seaman must, respectively, in the presence of the superintendent, sign, in the form sanctioned by the Board of Trade, a mutual release of all claims in respect of the last voyage or engagement, and the superintendent must also sign and attest it, and retain and transmit it as directed by the Act.

2. This release, so signed and attested, operates as a mutual discharge and settlement of all demands between the parties thereto in respect of the past voyage or engagement.

3. A copy of this release, certified under the hand of the superinten-

[1] Sec. 171. [2] Sec. 172. [3] Sec. 173. [4] Sec. 174.

dent to be a true copy, is given by him to any party thereto requiring the same, and this copy is receivable in evidence upon any future question touching such claims as aforesaid, and has all the effect of the original, of which it purports to be a copy.

4. In cases in which discharge and settlement before a superintendent are required by the Act, no payment, receipt, settlement, or discharge, otherwise made, operates, or can be admitted, as evidence of the release or satisfaction of any claim.

5. Upon any payment being made before a superintendent, he, if required, signs and gives to the captain a statement of the whole amount so paid; and as between the captain and his employers, this statement is to be received as evidence that he has made the payments therein mentioned.[1]

Upon every discharge effected before a superintendent, the captain must make and sign, in the form sanctioned by the Board of Trade, a report of the conduct, character, and qualifications of the persons so discharged,—or he may state, in the column left for that purpose in the form, that he declines to give any opinion upon these particulars, or upon any of them; and the superintendent transmits the same to the Registrar-General of Seamen, or to such other person as the Board of Trade directs, to be recorded,—and, if desired so to do by any seaman, must give to him, or endorse on his certificate of discharge, a copy of so much of that report as concerns him. Every person who makes, assists in making, or procures to be made, any false certificate or report of the service, qualifications, conduct, or character of any seaman, knowing the same to be false,—or, who forges,—assists in forging,—or procures to be forged,—or, who fraudulently alters,—assists in fraudulently altering,—or procures to be fraudulently altered, any such certificate or report,—or, who fraudulently makes use of any certificate or report, or of any copy of any certificate or report which is forged or altered, or does not belong to him,—he, for each such offence, is deemed guilty of a misdemeanour.[2]

The following case will show seamen the danger which is incurred by tampering with a report thus made:—On the discharge of a seaman, his captain made and signed a report of his character in the sanctioned form, and the superintendent gave the seaman a copy of it,—of which copy, the seaman procured A., for 2s. 6d., to make and give him a facsimile (an exact copy), only, in place of the letter "M.," which was in the original, and indicated that the seaman's character for ability and conduct was middling,—he wrote the letter "G.," indicating that it was good:—it was held, that he was guilty of an offence under this section 176.[3]

Though, in general, seamen are only entitled to payment of the wages stipulated in the ship's articles, yet, cases may occur, where, owing to the position of the ship, or the number and circumstances of the crew, a promise of a sum, in addition to their wages, for remaining with the ship, will be good. As, where some of the crew of a ship deserted at Port Philip, and the captain then gave to each of the men who remained a note for £40, to navigate the ship, thus short-handed, to Bombay, where the captain engaged additional hands, and arrived at Liverpool;—the owners then offered the seamen, holders of the promissory notes, their wages according to the articles, on condition of their giving up these notes,

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[1] Sec. 175. [2] Sec. 176. [3] Regina *v.* Wilson, 4 Jur. *n. s.* 670.

and signing a discharge in full: but some of the seamen brought an action in the *Admiralty Court, for their wages only*, which they recovered, and, also, an action in the *Queen's Bench*, for the amount of their promissory notes, which was also decided in their favour.[1] So, also, where, in consequence of the desertion of some of the seamen, a vessel was left short of hands in a harbour, before the voyage was completed; and, as an inducement to the others to perform the rest of the voyage with the diminished number of hands, the captain promised to pay them a sum in addition to their wages, and the rest of the voyage was accordingly performed with this diminished number:—in an action by one of the seamen against the captain, for the sum thus promised, the jury found that the captain made this bargain without any restraint, for the best interests of his owners,—that he could not have obtained new hands at a reasonable price,—and that it was unreasonable for so large a ship to proceed to the completion of her voyage with the hands so diminished;—and, taking this as finding that it was unsafe to proceed, it was held, that the seaman was entitled to recover, as the men were not bound to proceed with the diminished number of hands.[2]

But, where the seamen signed articles for a voyage to Melbourne and home, at £3 per month,—and, at Melbourne, ten of the crew deserted, when, to induce the others to remain, the captain signed new articles with them, at the rate of £6 per month, for the voyage from Melbourne home:—in an action by one of the seamen against the shipowners for the increased wages from Melbourne home, it was held, that the seaman was not discharged from his original agreement by what took place at Melbourne, and that, therefore, the captain had no authority to bind the owners by the new articles, nor was there any adequate consideration for the increased wages.[3] And, a captain, having been deserted by some of his crew, distributed the amount of their forfeited wages among those who remained and would navigate the ship home:—but, it was held, that this payment having been made illegally, the owners were entitled to deduct the amount from the wages due these seamen.[4]

Where, also, a seaman was engaged to serve as a common seaman, on a particular voyage of a British ship from and to a British port,—he, on the allegation that the vessel was leaky and unseaworthy, by which he became unwell and sustained damage,—was found not entitled to damages, as there was no allegation of knowledge or deceit, nor of any express warranty that the vessel was seaworthy,—a warranty which the law does not imply from the relation of owner and seaman; but on the allegation that his, the seaman's health had suffered from the neglect of the owner to keep on board a proper supply of medicines,—it was held, that the seaman having sustained injury from this neglect, was entitled to maintain an action for recovery of damages.[5] And, when seamen were injured by an accident on board, and they were taken on shore to an inn by their captain, who pledged his owner's credit for their maintenance and medical attendance; and, to perform their duty, other seamen were engaged:—it was held, that the captain had no implied authority to make his owner thus liable.[6]

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[1] *The Mobile*, 1 Swabey, 256.
[2] Hartley *v.* Ponsonby, 7 El. and Bl. 872. See also Hanson *v.* Royden, L. R. 3 C. P. 47.
[3] Harris *v.* Carter, 3 El. and Bl. 559.
[4] *The Araminta*, 18 Jur. 793.
[5] Couch *v.* Steel, 18 Jur. 515.
[6] Organ *v.* Brodie, 4 L. T. 70.

If, owing to the unexpected length of the voyage, the crew have been put on short allowance of provisions, they will be entitled to compensation for, and during the continuance of, the short allowance, in addition to and recoverable as their wages, in terms of section 223 of the Merchant Shipping Act;[1] and when, in consequence of the ship's provisions being exhausted, the seamen are forced to provide themselves, they are entitled to board wages from the ship, or out of its proceeds.[2] In the case of a seaman detained to give evidence, his rate of wages is a fair standard by which to fix his allowance and compensation for loss of time;[3] and, as the captain himself is personally liable for the seamen's wages, which they can recover by an action against him, so they are entitled to payment of their wages in precedence to his claim, either for his own wages, or for advances made by him to the seamen on account of their wages.[4]

But the contract or articles of agreement between the captain or the owner and the seamen may be prematurely brought to an end, without any fault or blame imputable to the captain or owner; and, when it is thus put an end to, the seamen's right to wages is also at an end. As, when a seaman was engaged for a particular voyage, and, in the course of that voyage, had to leave the ship and return to England, by authority of a British consul, as a witness on the trial of a person for an offence committed on the high seas:—it was held, that this operated as a dissolution of his engagement as a seaman, and that he could not recover any wages after that time.[5] And the agreement with the seamen may be put an end to by the abandonment of the vessel, or by the act of the captain discharging them, though that agreement is not ended by the vessel getting on some rocks, from which there is little hope of her being rescued, and it is then their duty to stay by the ship, and assist in saving her, and the cargo on board.[6]

When the ship has arrived at her final port of destination, the voyage is not ended, in regard to the seamen, by the mere circumstance of this arrival. "The act of mooring is an act to be done by the crew, and their duty extends to the time of the delivery of the cargo. There is no period at which the cargo is more exposed to hazard than when it is in the act of being transferred from the ship to the shore; and, therefore, the law has enjoined, in the strictest manner, that the mariners shall stay by the vessel until the cargo be actually delivered. I take this to have been always a part of the duty of the mariners,—their contract is legally understood to go this length. Therefore, departing from the ship without leave, or without just cause, before and until the cargo is fully discharged, is accounted a desertion; but, from that indulgence with which the law has always contemplated the interests, and even the errors and failures, of this class of men, it has wrought only the forfeiture of a part of the wages, by way of compensation to the owner for the trouble and risk of the exposure of his property, and for his additional expense in procuring other assistance to effect that which ought to have been effected by such deserters;"[7]—and, accordingly, by section 243 of the Merchant Shipping Act, "for quitting the ship without leave, after her arrival at her port of delivery, and before

[1] *The Josephine*, 2 Jur. *n. s.* 1048.
[2] *The San Jose Premeiro*, 3 L. T. *n. s.* 513.
[3] *The Olive*, 1 Swabey, 292.
[4] *The Salacia*, 7 L. T. *n. s.* 446.
[5] Melville *v.* De Wolfe, 4 El. and Bl. 844.
[6] *The Warrior*, 6 L. T. *n. s.* 133.
[7] *Per* Lord Stowell, in *The Baltic Merchant*, Edw. Ad. Rep. 86.

she is placed in security," any seaman or apprentice is "liable to forfeit out of his wages a sum not exceeding one month's pay."

By section 273 of the same Act, it is enacted, that every captain of a *foreign-going* ship, in whatever part of Her Majesty's dominions she is registered, of which the crew is discharged in the United Kingdom, and of every home-trade ship, must make out and sign a list in the form sanctioned by the Board of Trade,[1] containing the following particulars :—

1. The number and date of the ship's register, and her registered tonnage.

2. The length and general nature of the voyage or employment.

3. The Christian names, surnames, ages, and places of birth of all the crew, including the captain and apprentices; their qualities on board; their last ships or other employment, and the date and place of their quitting the ship.

4. The names of any members of the crew who have died, or otherwise ceased to belong to the ship, with the times, places, causes, and circumstances thereof.

5. The names of any members of the crew who have been maimed or hurt, with the times, places, causes, and circumstances thereof.

6. The wages due to any of the crew, who have died, at the respective times of their deaths.

7. The clothes and other effects belonging to any of the crew who have died, with a statement of the manner in which they have been dealt with, and the money for which any of them have been sold.

8. Every marriage which takes place on board, with the date, and the names and ages of the parties.

Within forty-eight hours after the arrival of a foreign-going ship at her port of final destination in the United Kingdom, or on the discharge of the crew (whichever first happens), the captain delivers this list to the superintendent before whom the crew is discharged, and the superintendent gives him a certificate of this delivery; and if the captain fails to do so, he incurs a penalty not exceeding £5; and no customs officer can clear inwards any foreign-going ship without production of this certificate.[2]

The captain or owner of every *home-trade* ship has, also, within twenty-one days after the 30th June and 31st December in each year, to deliver or transmit to a superintendent in the United Kingdom, a similar list for the half-year preceding, under a like penalty and restriction.[3] And section 276 makes provision for the delivery of this list on the transfer or loss of a foreign-going or home-trade ship.

But, instances have occurred and may occur, in which seamen are hired and serve without having signed any articles of agreement; and though such instances are rare, yet the seaman will be entitled to remuneration for his services, according to the *quantum meruit*, how much has he deserved. As it has been held, that, when a British vessel changed owners, by a sale in this country, while she was in a foreign port, the agreement with her crew was at an end, as to the new owner; but, if one of this crew continues to serve on board at the request of an agent of the new owner, without entering into any new articles, and afterwards, and before the termination of

[1] See Appendix. [2] Sec. 274. [3] Sec. 275.

the intended voyage, he quits the ship with consent of the new captain, he may, in an action against the new owner, recover wages proportionally.[1]

XVIII.—MODES OF RECOVERING WAGES.

The seamen have three separate remedies for recovery of their wages :—1. Against the ship or its proceeds : 2. Against the owner : or, 3. Against the captain.

The seamen can apply to the High Court of Admiralty to have decree for their wages, and, if necessary, a sale of the ship, for payment of these ; and, by section 10 of the 24 and 25 Vict., cap. 16, the High Court of Admiralty has jurisdiction over any claim by a seaman of any ship for wages earned by him on board the ship, provided that, if he does not obtain a judgment for £50, he is not entitled to any costs, &c., unless the judge certifies that the cause was a fit one to be tried in the court. The court has no authority to restrain seamen from proceeding against the ship for their wages, though there be no doubt of the solvency of the owner.[2] And there is no distinction in their right of preference to a bottomry bond, between the wages earned before, and those earned after the date of the bond ;[3] and a claim for wages is preferred to a bottomry bond granted before the wages were earned.[4] When salvage services have been rendered to a ship, the claim of the seamen ranks next after the claim of the salvor, and before the claim of the shipwright, for the wages earned before the ship came into the shipwright's hands.[5]

The seamen can also recover their wages, by an action at common law, from the captain personally, as the party with whom they have personally contracted, or from the owner, as responsible for the performance of this contract by the captain. As to the liability of the owner, there cannot be any doubt ; and, as to the captain, "it has been so long an established rule, as to be unknown in its origin, that the seamen can recover their wages by an action against the captain, and are entitled to be paid their wages, before the captain's claim, either for his own wages, or for sums advanced by him to the seamen on account of their wages."[6] But, when the wages are under £50, the Merchant Shipping Act prescribes a short mode of recovering them ; it being enacted by section 188, that any seaman or apprentice, *or any person duly authorised on his behalf*, can sue in a summary manner—before any two justices of the peace, acting in or near to the place at which the service has terminated, or at which the seaman or apprentice has been discharged, or at which any person upon whom the claim is made, is or resides,—or, in Scotland, either before any such justices, or before the sheriff of the county, within which any such place is situated, —for any amount of wages due to the seaman or apprentice, not exceeding £50, over and above the costs of any proceedings for recovery thereof, as soon as the same becomes payable ; and every order made by the justices or the sheriff in the matter is final.[7]

No suit or proceeding for the recovery of wages under £50, must be brought by or on behalf of any seaman or apprentice, in any Court of Ad-

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[1] Robins *v.* Power, 4 Scott, *n. s.* 778.
[2] *The Arab*, 5 Jur. *n. s.* 417.
[3] *The Union*, 30 L. T. 17.
[4] *The William F. Safford*, 1 Lushington, 69.
[5] *The Gustaf*, 31 L. T. 207.
[6] *The Salacia*, 11 W. R. 189.
[7] Sec. 188.

miralty or Vice-Admiralty, or in the Court of Session in Scotland, or in any court of record in Her Majesty's dominions, unless the owner of the ship is decreed bankrupt or declared insolvent, or unless the ship is under arrest, or is sold by the authority of court, or unless any justice, acting under the Act, refer the case to be decided by such court,—or, unless neither the owner nor master is or resides within twenty miles of the place where the seaman or apprentice is discharged or put ashore.[1]

And now a seaman may, under the provisions of the County Courts Admiralty Jurisdiction Act, 1868, 31 and 32 Vict., cap. 71, sue for his wages in any County Court having Admiralty jurisdiction; but his claim must not exceed £150. And if he does not avail himself of this remedy, but elects to sue in a superior court, and does not recover more than £150, he risks not only losing his own costs, but also having to pay the costs of the defendant.

No seaman, who is engaged for a voyage or engagement which is to terminate in the United Kingdom, is entitled to sue in any court abroad for wages, unless he is discharged with the sanction required by the Merchant Shipping Act, and with the written consent of the captain,—or, unless he proves such ill-usage on the part of the captain or by his authority, as to warrant reasonable apprehension of danger to the life of such seaman, if he were to remain on board. But, if any seaman, on his return to the United Kingdom, proves, that the captain or owner has been guilty of any conduct or default, which, but for this enactment, would have entitled the seaman to sue for wages before the termination of the voyage or engagement,—he is entitled to recover, in addition to his wages, such compensation, not exceeding £20, as the court hearing the case thinks reasonable.[2]

Every captain, so far as the case permits, has the same rights, liens, and remedies for the recovery of *his* wages, which, by this Act, or by any law or custom, any seaman, not being a captain, has for the recovery of his wages,—and if,—in any proceeding in any Court of Admiralty or Vice-Admiralty, as to the claim of a captain to wages,—any right of set-off or counter-claim is set up, the court can enter into and adjudicate upon all questions, and settle all accounts, then existing, or outstanding and unsettled between the parties to the proceeding, and may direct payment of any balance which is found to be due.[3]

Service of any summons or other matter, in any legal proceedings under the Act, is good, if made personally on the person to be served, or at his last place of abode, or, if made by leaving such summons for him on board any ship to which he may belong, with the person being or appearing to be in command or charge of the ship.[4]

In all cases, where any court, justice or justices of the peace, or other magistrate, has or have power to make an order directing payment to be made of any seaman's wages, &c., then, if the party so directed to pay the same is the captain or owner of the ship, and the same is not paid at the time and in the manner prescribed in the order, the court, justice or justices, or other magistrate, who made the order, in addition to any other powers they or he may have for the purpose of compelling payment, can direct the amount remaining unpaid to be levied by distress or poinding and sale of the ship, her tackle, furniture, and apparel.[5]

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[1] Sec. 189. [2] Sec. 190. [3] Sec. 191. [4] Sec. 522. [5] Sec. 523.

XIX.—BARRATRY OF CAPTAINS AND MARINERS.

Barratry is a term which in law comprehends every fraud or fraudulent act, and every fraudulent breach of duty by the captain and mariners in their character as such, in respect of the owners, and committed to their injury, contrary to the duty of the captain and mariners, and without the knowledge or consent of the owners; and generally it includes whatever is a cheat or fraud, or fraudulent act of the captain or crew, to the injury of the owner.[1]

Therefore if the captain sail out of port without paying the port dues, by which the goods are forfeited,[2] or if he disregard an embargo,[3] or attempt to enter a blockaded port in breach of the blockade,[4] although the knowledge of a blockade by the captain is not to be presumed from notification to the State in the *London Gazette*,[5]—these are acts of barratry. So also, if the captain of a ship, contrary to the instructions of his owners, cruise for and take a prize, this is barratry;[6] and a fraudulent deviation for the purpose of smuggling,[7] or being engaged in smuggling, or conniving at smuggling, against the consent of the owners,[8] are acts of barratry.

It is also barratry, if a captain anchor at a place for a fraudulent purpose, following an adventure of his own,—and, thereafter, stands away for a place out of the line of his voyage.[9] Trading with the enemy without the royal licence is barratry,[10] and, where the captain sails to an enemy's settlement on the coast, without having instructions to go there, but for the purpose of trading to more advantage than at a British settlement,[11]—this trading is barratry. And, where a ship and the cargo were barratrously taken out of her course by the crew, and the ship and part of the cargo sold, and the remainder sent home by another vessel, this was held barratry.[12]

But, where the captain requires to exercise his own discretion, and only errs in judgment, without any fraudulent or criminal intent,—this is not barratry. Thus, when, in the course of a voyage, the captain loses his reckoning, and, on recovering his situation, in place of steering directly to his destination, bears up for an island out of his course,—this is a deviation, but, being without any fraudulent intention, is not barratry.[13] If a captain makes a deviation, through mistake as to the meaning of his instructions, or misapprehension of the best mode of carrying them into effect,—going to New Zealand instead of to East India,—this will not constitute barratry.[14] And, where the captain throws overboard so much of the ballast, that the vessel becomes unseaworthy and is lost,—this is wilful and wrongful on the part of the captain, but is not barratrous.[15]

In a case where a ship having sprung a leak, the captain took her into port, and, before any survey was made, he broke up her ceiling and end-

1 Shee's Abbot, 141.
2 Knight *v.* Cambridge, 1 Strange, 580.
3 Robertson *v.* Ewer, 1 T. R. 126.
4 Goldschmidt *v.* Whitmore, 3 Taunt. 508.
5 Harralt *v.* Wise, 9 B. and C. 712.
6 Moss *v.* Byrom, 6 T. R. 379.
7 Lockyer *v.* Offley, 1 T. R. 252.
8 Pipon *v.* Cope, 1 Camp. 434.
9 Hunter *v.* Ross, 3 T. R. 33.
10 *The Hoop*, Cornelis, 1 Rob. 106.
11 Earl *v.* Rowcroft, 8 East, 126.
12 Dixon *v.* Reid, 5 B. and A. 597.
13 Phyn *v.* Ro. Ex. Ass. Co., 7 T. R. 505.
14 Bottomly *v.* Bovill, 5 B. and C. 210.
15 Dixon *v.* Sadler, 5 M. and W. 405; and see Grill *v.* Gen. Iron Screw Co., L. R. 3 C. P. 476.

bows with crowbars, thereby injuring and weakening her; but, in an action on a policy of insurance for loss, by barratry of the captain, the judge said:—"To constitute barratry, which is a crime, the captain must be proved to have acted against his better judgment; as the case stands, there is a whole ocean between you and barratry."[1]

It is immaterial whether the loss happened during the act of barratry,—the fraudulent voyage,—or *after* the ship has returned to her regular course. In a case already referred to, it was held, that there was a total loss of the cargo, from the moment the ship was taken out of her course, by the barratrous act of the crew,[2] but the loss must happen during the voyage insured, and within the limits of the policy, in order to render the underwriters liable for the act of barratry; and, therefore, when the captain had been guilty of smuggling during the voyage, and the vessel was not seized on account of the smuggling till after she had been moored in safety for twenty-four hours at her post of destination, when the insurance ends,—the insurers were not liable.[3] And, if a ship be insured "in any lawful trade," and barratry be one of the risks,—the insurers are answerable for the barratry of the captain, by his engaging in smuggling, without the knowledge or consent of the owners.[4]

Barratry can be committed by one part-owner, being captain, against another part-owner,[5] but if the captain is also sole owner, he cannot commit barratry against himself; and this will hold, notwithstanding he may have mortgaged the ship:[6] where this act is done with the concurrence of the owner, or by his agent, or by the charterers who are also the owners of the goods, it is not barratry;[7] but it is not merely against those having the legal title that barratry can be committed. It can be committed against the general freighter, though it be done by consent of the owner; and where the entire vessel is, by contract, placed for the time under the sole control of the freighter, an act done by the general owner, or with his consent, in fraud of the freighter, is barratry.[8] But if the shipowner has chartered his ship, and the charterer himself, or his agent, has put smuggled goods on board, for which the vessel is seized and condemned,—this is not barratry, as the shipowner cannot recover for loss by barratry, committed by order of the charterer, to whom he had given the dominion of his ship, so that the charterer's acts were his own acts.[9]

These acts of barratry are not punished criminally; but there are other offences, falling within the definition of barratry, which may be committed by a captain and mariners in breach of their trust and duty, and which are punished very severely.

By statute it is enacted, that any person unlawfully and maliciously setting fire to, casting away, or in any ways destroying any ship or vessel, either with intent to murder any person, or whereby the life of any person is endangered, he is guilty of felony, and, being convicted, shall suffer death.[10] Any person unlawfully exhibiting any false light or signal, with intent to bring any ship or vessel into danger, or unlawfully and maliciously doing anything tending to the immediate loss or destruction of any

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[1] *Per* Lord Ellenborough in Todd *v.* Ritchie, 1 Starkie, 240.
[2] Dixon *v.* Reid, *ut ante.*
[3] Lockyer, *ut supra.*
[4] Blankly *v.* Winstanley, 3 T. R. 279.
[5] Boutflower *v.* Wilmer, 2 Selwyn, 976.
[6] Arnould, 833.
[7] Marshall, 416.
[8] Soares *v.* Thornton, 7 Taunt. 627.
[9] Hobbs *v.* Hannam, 3 Camp. 93.
[10] 7 Will. IV., and 1 Vict., cap. 89, sec. 4.

ship or vessel in distress, is guilty of felony, and, being convicted, shall suffer death.[1] Any person unlawfully and maliciously setting fire to, or in anywise destroying any ship or vessel, whether the same be complete or in an unfinished state, or wilfully and maliciously setting fire to, casting away, or in anywise destroying any ship or vessel, with intent thereby to prejudice the owner or part-owners of the ship or vessel, or of any goods on board, or the underwriters thereon, or on the freight, he is guilty of felony, and, being convicted, is liable, at the discretion of the court, to be transported beyond seas for his natural life, or for not less than fifteen years, or to be imprisoned for not exceeding three years.[2] Any person, by force, preventing or impeding any person endeavouring to save his life from any ship or vessel in distress, or wrecked, stranded, or cast on shore, whether he be on board, or have quitted the same, is guilty of felony, and, being convicted, is liable to be punished the same as in the former section.[3] And any person unlawfully and maliciously destroying any part of any ship or vessel in distress, or wrecked, stranded, or cast on shore, or any goods, merchandise, or articles of any kind, is guilty of felony, and on being convicted, is liable to the same punishment as in the two previous sections.[4]

It has been doubted whether a pleasure boat, eighteen feet long, or a barge, wilfully set fire to, were within the meaning of the Act.[5]

By an English statute,[6] it was enacted, that, if any natural-born subject commit an act of hostility upon the high seas against any other subject, under colour of a commission from a foreign power,—or, if any commander or mariner betray his trust, and turn pirate, and piratically and feloniously run away with his or their ship, &c., goods or merchandise, or yield them up voluntarily to any pirate, or bring any seducing letter from any pirate, enemy, or rebel, or consult, combine, or confederate with, or attempt to corrupt any commander, officer, or mariner, to run away with the ship, goods, or merchandise, or turn pirate, or go over to pirates, or lay violent hands on his commander, to prevent him from fighting in defence of his ship and goods, or confine his master, or make, or endeavour to make, a revolt in the ship,—such person is to be deemed a pirate, felon, and robber, and, being convicted, is to suffer death, and loss of lands, goods, and chattels, as a pirate. By the 18 Geo. II., cap. 30, it was enacted, that subjects or denizens (a foreigner made free) committing hostilities at sea against His Majesty's subjects, or giving aid to his enemies at sea, should be tried and punished as pirates. And it is also enacted by 7 Will. IV., and 1 Vict., cap. 88, sec. 3, that persons convicted of any offence, which, by the Acts referred to in that section, amounts to piracy, shall be liable to be transported for life,—or, for any term not less than fifteen years,—or, to be imprisoned for any term not exceeding three years.

XX.—PILOTS AND PILOTAGE.

In establishing pilots, the object is, to secure, as far as possible, protection to life and property, by providing a class of men better qualified than ordinary mariners to take charge of ships in places where, from local

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[1] Sec. 5. [2] Sec. 6. [3] Sec. 7. [4] Sec. 8.
[5] Rex *v.* Bowyer, 4 C. and P. 559; Rex *v.* Smith, 4 C. and P. 569.
[6] 11 and 12 Will. III., made perpetual by 8 Geo. I., cap. 19.

causes, navigation is attended with more than common difficulty To effect this object, it has been made the duty of the master-mariner of a ship, on arriving at any of such places, to take a pilot on board, and to give up to him the navigation of the vessel. The captain, however well qualified to conduct the vessel himself, is bound, under a penalty, in a great measure to divest himself of the control, and to give up the charge to the pilot. As a necessary consequence, the captain and owner are exempted from responsibility for acts resulting from the mismanagement of the pilot. But there may be a class of cases in which the presumption of due competency on the part of the captain is so strong as to make it safe to relieve him of the obligation of taking a pilot, if he chooses to navigate for himself, still, however, making it the duty of the pilot to serve, if required so to do, and, in most of the exempted cases, preventing the captain from employing any person other than a licensed pilot, if he does not undertake the navigation himself. In any local navigation, a master-mariner or his mate may become familiar with practically navigating any particular part of a voyage, yet the general rule is, that the captain of a foreign-going vessel must put his ship, both in the outward and homeward voyages, under charge of a regularly licensed pilot, within the limits of every pilotage establishment,[1] unless when the vessel is within the limits for which the captain or mate has been examined and duly certified, as fit to pilot the same in terms of the 17 and 18 Vict., cap. 104, sec. 340. It is another general rule, that, *when a captain is bound, by Act of Parliament, under a penalty, to place his ship in the charge of a pilot, and does so accordingly*,—the ship is not to be considered as under the management of the owners or their servants, and they are not liable for any damage occasioned by the mismanagement of the ship, unless it be proved that it arose from the neglect or misconduct of the captain or crew; but, *when it is in the option of the captain* to take a pilot or not, as he may think fit, and he does take a pilot,—the pilot so taken is to be considered as the servant of the owners, and, as such, they are responsible for his misconduct.[2] Under what circumstances, and within what limits, a captain is bound to put his vessel under the charge of a regularly licensed pilot, will, in general, depend upon the terms of local statutes, or upon the known and established usage of particular ports and places, with both of which it is the duty of a captain to make himself fully acquainted, before sailing on any voyage where such pilotage will be required.

If a vessel requires the services of a pilot, the master must cause the following signals to be made, viz.,—*in the daytime*, (1.) To be hoisted at the fore, the jack or other national colour usually worn by merchant ships, having round it a white border, one-fifth of the breadth of the flag; or (2.) The International Code pilotage signal, indicated by P. T.; and *at night*, (1.) The pyrotechnic light commonly known as a blue light, every fifteen minutes; or (2.) A bright white light, flashed or shown at short or frequent intervals just above the bulwarks, for about a minute at a time. And if a master uses any of these signals for other purposes, or signals for a pilot in any other manner than herein directed, he incurs a penalty not exceeding £20 (Merchant Shipping Act, 1873, 36 and 37 Vict., cap. 85, sec. 19).

If the captain, when within the limits of a pilot's establishment, uses

[1] Law *v.* Hollingworth, 7 T. R. 160. [2] *The Earl of Auckland*, 10 W. R. 124.

such reasonable diligence as a prudent man, in the exercise of a sound discretion, would do, to get a pilot, by making the proper signals for a pilot, but no pilot comes off,—and, if the captain is a person of competent skill, he is entitled, in good faith, to exercise his own sound discretion in entering into the difficult part of the navigation,—and if, in these circumstances, the vessel strikes the ground, and is lost, the underwriters will be liable.[1] And as the captain is bound to use due diligence to have a pilot on board on all places in pilot's fairway, or within the limits of a pilot's establishment, so, by section 388 of the Merchant Shipping Act, 1854, no owner or captain of any ship is answerable to any person whatever for any loss or damage occasioned by the fault or incapacity of any qualified pilot, acting in charge of such ship, within the district where the employment of such pilot is *compulsory by law;* and, therefore, when the owner of a vessel was pursued for damages caused by collision,—he admitted the collision, but pled that the damage was caused by the pilot, whom he was compelled to have on board his vessel, when the collision took place :—and it was held that the owner was not responsible.[2] It is also enacted by section 354, that the captain of every sea-going ship, carrying passengers between any place in the United Kingdom, or the islands of Guernsey, Jersey, Alderney, Sark, and Man, and any other place so situated,—when navigating upon any waters situate within the limits of any district for which pilots are licensed by any pilotage authority,—under the provisions of that or of any other Act,—must employ a qualified pilot to pilot his ship,—unless he or his mate has a pilotage certificate enabling the one or the other to pilot the ship within that district, or a certificate, as after mentioned, applicable to that district, and to the ship; and, if he fails so to do, he, for every offence, incurs a penalty not exceeding £100.[3]

To relieve the owner from responsibility, the pilot on board must be actually on deck, and in charge of the ship; and then the owner is not freed, by section 388, from liability for damage caused by his vessel, unless that damage was *solely* caused by the negligence or unskilfulness of the pilot, and no blame was imputable to the captain and crew.[4] The pilot on board has the sole charge of the navigation of the ship, and the captain is not *bound* to interfere, and the owners are not responsible for the damages caused by the pilot's disregarding the steering or sailing rules, provided the ship is in ordinary safe trim (which it is the proper business of the captain to look after), though she may have been in handier trim, and though that trim tended, in part, to the collision; but, if the ship is *not* in ordinary safe trim, and a collision is in any degree occasioned thereby, the owner is liable, though a licensed pilot was in charge.[5]

But a serious question may arise in such cases,—whether the collision or other accident was owing to the pilot's "neglect, default, incompetency, or incapacity"? (the words of section 55 of the repealed Pilots Act, 6 Geo. IV., cap. 12), or, was the captain equally to blame? In reference to such a question, it was said by Sir John Nicholl,[6]—"It [the accident] occurred from the vessel going on in a fog,—not from any act of bad steerage, want of knowledge of shoals, or any incapacity in the pilot, but from proceeding

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[1] Phillips *v.* Headlam, 2 B. and Ad. 380.
[2] *The Killarney*, 6 L. T. *n. s.* 908.
[3] Sec. 354.
[4] *The Mobile*, 1 Swabey, 60, 127.
[5] *The Argo*, 1 Swabey, 462.
[6] In *The Gwolamo*, 3 Hag. 176.

at all. It seems to be nearly admitted, that, if the vessel had set off in this fog, blame would have been imputable to the captain :—if so, was he not blameable in *going on* in the fog? Had he not a right to resume his authority? Did he not owe it to his owners, and to other persons whose property might be damaged by a collision, to insist on bringing the vessel up? If he was in as much haste to get out of port as the pilot was to finish his job, were they not equally to blame? Was not the captain in duty bound, at least, to remonstrate with the pilot, and to represent the danger of proceeding? Is the captain, or are the owners, relieved from all sorts of responsibility, however gross and manifest the misconduct of the pilot may be, whilst the captain remained a passive looker-on, without taking any step to guard against damage?" And, as to the duty or the option of a captain to take a pilot or not, a very learned judge has said :[1]—"The object of the Legislature in establishing pilots has been to secure, as far as possible, protection to life and property, by supplying a class of men, better qualified than ordinary mariners, to take charge of ships in places where, from local causes, navigation is attended with more than common difficulty. To effect this object, it has, in general, been made the duty of the captain of every ship, on arriving at any of such places, to take a pilot on board, and to give up to him the navigation of the vessel. The captain, however well qualified to conduct the vessel himself, is bound, under a penalty, in a great measure to divest himself of its control, and to give up the charge to the pilot. As a necessary consequence, the captain and owners are free from responsibility for acts resulting from the management of the pilot. But the Legislature has considered, that there may be some class of cases, in which the presumption of due competency on the part of the captain is so great, as to make it safe to relieve him from the obligation of taking a pilot, if he chooses to navigate for himself, still, however, making it the duty of the pilot to serve if required so to do." Accordingly, section 388 frees owners and captains from responsibility for any loss or damage occasioned by the *fault* or *incapacity* of any qualified pilot in charge, only *where the employment of such pilots is compulsory by law*, enactments as to which will be subsequently detailed. But the difficulty is, in cases of *licensed* pilotage, whether damage may have been occasioned by the fault of the pilot,—or, by the fault of the captain,—or, by the joint fault of both. As, when a ship, with a licensed pilot on board, was, in bad weather, at anchor in the Downs, and was run into by another vessel, and made to start from her anchorage and drive into a vessel at anchor; but, he had neglected to send down her top-gallant and main-royal yards, and also her short fore and mizzen-top-gallant masts, and he did not set her stay-sail and jib, and so drag her anchor off shore:—it was held, that the neglect to set the stay-sail and jib, after she was driven from her anchorage, was the fault of the pilot; but, that the neglect in not sending down the top-gallant masts, &c.,—the cause of the damage,—was the joint fault of the pilot and captain, and that the owners were not freed from liability by section 55 of 6 Geo. IV., cap. 125.[2] So also, when a large steamer, in charge of a licensed pilot, proceeding up the Pool at nearly high tide, and at a speed dangerous to small craft,—caused so great a

[1] *Per* Parke, B., in Lucy *v.* Ingram, 6 M. and W. 315.
[2] Hammond *v.* Rogers, 7 Moore, P. C. C. 168.

swell as to sink a barge laden with coals:—it was held, that, as there was part blame in the captain and crew, and in the pilot,—the owners were not freed from liability for damage by said section 55, by reason of having a licensed pilot on board.[1] It is always a question of fact, which must be proved, whether, at the time of an accident happening, the vessel was actually under the direction of the pilot or not.[2]

But, if damage is done by a vessel proceeding to sea, under charge of a licensed pilot, the owners, in order to free themselves from liability, are bound to show, that the accident was occasioned exclusively by the pilot's fault.[3] And, if the owners rely on the misconduct of the pilot as relieving them from responsibility, the wrongful act of the pilot, which was the cause of the mischief, must be distinctly proved,—it being, as a general rule, the captain's duty to repeat, if necessary, the pilot's orders, and, for any manœuvre so carried out, the pilot is solely responsible.[4] But, though there be a pilot on board, the captain is bound, in a case of obvious danger,—as going down a river where other vessels are lying, in a thick fog,—to interfere in the management of the vessel.[5] So a captain is at liberty to employ steam, or other moving power, *bonâ fide* used as a moving power, if, upon the party applying such power, necessarily devolves the selection of the ship's course, and the charge and conduct of her in that course.[6]

The following points have been established as applicable to all pilots:—

1. A pilot must have competent skill and ability, and must exercise these with diligence and discretion; and in doing so, he is only responsible for such miscarriage or accident as may be occasioned by negligence, unskilfulness, or positive default.[7]

2. A pilot is bound to conduct himself with that proper skill and ability which he owes to those who employ him. Exercising a profession of art, he is responsible for misperformance; and if he is guilty of positive default or negligence, or if he wants the proper skill and competency of a person in his situation, he is responsible.[8]

3. When the captain is bound, by an Act of Parliament, and under a penalty, to place his ship in charge of a licensed pilot, and does so accordingly, the pilot supersedes the captain in the temporary management of the vessel, and neither captain nor owners are responsible for the acts of a person whom they are bound to employ, and over whom they have no control. But even when the taking of a licensed pilot is optional on the part of the captain; yet as it is always for the interest of the public that the vessel should be under the charge of a regularly licensed pilot, so where the vessel is under the exclusive charge of such, the captain and owners will be exempted from liability.[9]

4. When a qualified pilot offers to take charge of a vessel, or tenders his services as pilot, he must produce his licence; and if he do not, the captain need not permit him to take charge; nor will he be liable in the penalties for refusing, or for continuing an unlicensed person in

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[1] Netherlands Steamboat Co. *v.* Styles, 9 Moore, P. C. C. 286.
[2] Cutts *v.* Herbert, 3 Starkie, 12.
[3] Rodriguez *v.* Melhuish, 10 W. H. and G. 110.
[4] *The Admiral Boxer*, 1 Swabey, 193.
[5] *The Girolamo, ut supra.*
[6] Beilby *v.* Scott, 7 M. and W. 101.
[7] *The Mobile*, 1 Swabey, 60.
[8] *Per* Parke, B., in Beilby *v.* Scott, *ut supra.*
[9] *Per* Parke, B., in Lucy *v.* Ingram, 6 M. and W. 315; and see *The City of Cambridge*, 4 A. and E. 161.

charge;[1] nor if an unlicensed person has charge, when a licensed and duly qualified pilot appears and offers to take charge, will the captain incur the penalty by continuing that unlicensed person in charge, unless it appears that the pilot's offer was made to, or in presence of, the captain.[2]

5. When a qualified pilot is on board and has charge, the owners are exempted from responsibility although the vessel come in collision with another vessel, whether British or foreign,—unless in the case of obvious danger, in which the captain is bound to interfere, or where the fault is alike imputable to the pilot and to the captain or crew.[3] But, it is always a question of fact to be proved,—whether the vessel was really at the time under the orders of the pilot?[4]—or, whether the accident was from his incapacity? and, if the misconduct, &c., of the captain or the crew has contributed to the accident, the owners remain liable.[5]

6. If towing be necessary, pilots are bound to perform this service,—having a claim to compensation for their boats, &c., and for extra labour.[6] —*See* the chap. SALVAGE AND TOWAGE.

The Trinity House, after due examination, themselves, or their sub-commissioners appointed, appoint and license pilots, for the purpose of conducting ships within the limits following, or any portion of such limits, viz.:—

1. "The London District,"—comprising the waters of the Thames and Medway, as high as London Bridge and Rochester Bridge, respectively, and also the seas and channels leading thereto or therefrom, as far as Orfordness (where there is a fixed lighthouse) to the north, and Dungeness (where there is another fixed lighthouse) to the south,—so, nevertheless, that no pilot shall be hereafter licensed to conduct ships both above and below Gravesend.

2. "The English Channel District,"—comprising the seas between Gravesend and the Isle of Wight.

3. "The Trinity House Outport District,"—comprising any pilotage district for the appointment of pilots, within which no particular provision is made by any Act of Parliament or charter.

And by the Merchant Shipping Act, 1872, 35 and 36 Vict., cap. 73, sec. 11, any Pilotage Authority may, if authorised in that behalf by Order in Council, grant special licences qualifying persons to act as pilots for any part of the sea or channels beyond the limits of any Pilotage Authority; so, however, that no pilot so licensed be entitled to supersede an unlicensed pilot outside the limits of the authority by which he is licensed.

In the Merchant Shipping Act, the term "Pilotage Authority" is applied to "all bodies or persons authorised to appoint or license pilots, or to fix or alter rates of pilotage, or to exercise any jurisdiction in respect of pilotage;" and the Merchant Shipping Act, and the Amendment Act, 1862, have the following enactments as to pilots:—

PILOTAGE AUTHORITIES (GENERAL).—Every "Pilotage Authority" retains all powers and jurisdictions which it now lawfully possesses, so far as the same are consistent with the provisions of the Act; but no law

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1 Hammond *v.* Blake, *ut supra.*
2 Peake *v.* Carrington, 1 B. and B. 399.
3 *The Christiana*, 2 Hag. 183.
4 *The Lochlibo*, 1 W. Rob. 310.
5 *The Protector*, 1 W. Rob. 45.
6 *The General Palmer*, 2 Hag. 176.

relating to such authority, or to the pilots licensed by it, and no act done by such authority, if inconsistent with any provision of the Act, is of any force.[1] Subject to the provisions of the Act, every Pilotage Authority is authorised, by bye-laws made with consent of Her Majesty in Council, from time to time, to do all or any of the following things within its districts :—

1. To determine the qualifications to be required from persons applying to be licensed as pilots, whether in respect of their age, skill, time of service, character, or otherwise.

2. To make regulations as to the approval and licensing of pilot-boats and ships, with power to establish and regulate companies for the support of such boats and ships, and for a participation in the profits made thereby.

3. To make regulations for the government of the pilots licensed by them, and for insuring their good conduct and constant attendance to and effectual performance of their duty, either at sea or on shore.

4. To fix the terms and conditions of granting licences to pilots and apprentices, and of granting such pilotage certificates as after mentioned to masters and mates; and to make regulations for punishing any breach of such regulations committed by such pilots or apprentices, or by such masters and mates, by the withdrawal or suspension of their licences or certificates, as the case may be, or by the infliction of penalties, to be recoverable summarily before two justices, so that no such penalty be made to exceed the sum of £20, and so that every such penalty be capable of reduction, at the discretion of the justices by whom the same is inflicted.

5. To fix the rates and prices, or other remuneration, to be demanded and received, for the time being, by pilots licensed by such authority, or to alter the mode of remunerating such pilots, in such manner as such authority may, with consent of Her Majesty in Council, think fit, so that no higher rates or prices be demanded or received from the masters or owners of ships, in the case of the Trinity House, than the rates or prices specified in the Table U annexed to the Act; and, in the case of all other Pilotage Authorities, than the rates or prices which might have been lawfully fixed or demanded by such Pilotage Authorities respectively, under any Act of Parliament, charter, or custom before the commencement of the Act.

6. To make such arrangements with any other Pilotage Authority, for altering the limits of their respective districts, extending the powers of such other authority, or the privileges of the pilots licensed by such other authority, or any of them, to all or any part of its own district, or for limiting its own powers or the privileges of its own pilots, or any of them, or for sharing the last-mentioned powers and privileges with the said other authority and the pilots licensed by it, or for delegating or surrendering such powers and privileges, or any of them, to any other Pilotage Authority, either already constituted or to be constituted by agreement between such authorities, and to the pilots licensed by it, as may appear to such Pilotage Authorities to be desirable for the purpose of facilitating navigation, or of reducing charges on shipping.

7. To establish, either alone, or in conjunction with any other Pilotage Authority or Authorities, funds for the relief of superannuated or infirm qualified pilots, or of their wives, widows, or children, or to make any new

[1] Sec. 331.

regulations with respect to any funds already applicable to such purposes, or any of them, with power to determine the amount, manner, time, and persons (such persons being in the service of that Pilotage Authority), to and in which, and by and upon whom, the contributions in support of such existing or future funds may be made or levied; and further, to declare the persons or class of persons entitled to participate in the benefits of such existing or future funds, and the terms and conditions upon which they are to be so entitled,—such persons or class of persons being confined to men in the service of such Pilotage Authority, their wives, widows, or children; and,

8. To repeal or alter any bye-law made in the exercise of these powers, and to make a new bye-law or new bye-laws in lieu thereof.

Every bye-law made by any Pilotage Authority, in exercise of these powers, is valid and effectual, notwithstanding any Act of Parliament, rule, law, or custom to the contrary,[1] and every bye-law, proposed to be enacted by any Pilotage Authority, in pursuance of these powers, before it is submitted for Her Majesty's assent, must be published in such manner as may from time to time be prescribed by the Board of Trade.[2]

All boats and ships regularly employed in the pilotage service of any district must be approved of and licensed by the Pilotage Authority of that district, who can at their discretion appoint and remove the masters of such boats and ships.[3]

Every pilot boat or ship must be distinguished by the following marks, viz.:—

1. A black colour painted or tarred outside, with the exception of such names and numbers as are after mentioned; or such other distinguishing colour or colours as the Pilotage Authority of the district, with consent of the Board of Trade, directs.

2. On her stern the name of the owner and the port to which she belongs, painted in white letters, at least an inch broad and three inches long, and on each bow the number of the licence of such boat or ship.

3. When afloat, a flag at the mast-head, or on a sprit or staff, or in some other equally conspicuous situation; such flag to be of large dimensions compared with the size of the boat or ship carrying the same, and to be of two colours, the upper horizontal half, white, and the lower horizontal half, red.

And it is the duty of the master of such boat or ship to attend to the following particulars:—1st, That the boat or ship possesses all the above characteristics; 2dly, That the flag is kept clean and distinct, so as to be easily discerned at a proper distance; and lastly, That the names and numbers before mentioned are not at any time concealed. If failure or omission is made in any of the above particulars, he incurs a penalty not exceeding £20 for each default.[4]

When a qualified pilot is carried off in a boat or ship not in the pilotage service, he must exhibit a flag of the above description, in order to show that such boat or ship has a qualified pilot on board; and if he fails to do so, without reasonable cause, he incurs a penalty not exceeding £50.[5]

If any boat or ship not having a licensed pilot on board displays a flag of the above-mentioned description, for every such offence a penalty not

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[1] Sec. 333. [2] Sec. 334. [3] Sec. 345. [4] Sec. 346. [5] Sec. 347.

exceeding £50 is incurred, to be recovered from the owner or from the master of such boat or ship.[1]

No qualified pilot is entitled to act as such, until his licence is registered by the principal officer of customs at the place at or nearest to which he resides; and any qualified pilot acting beyond the limits for which he is qualified by his licence, is considered as an unqualified pilot.[2]

Upon receiving his licence, every qualified pilot is furnished with a copy of that part of the Merchant Shipping Act which relates to pilotage, with a copy of the rates, bye-laws, and regulations, established within the district for which he is licensed; and he must produce these copies to the captain of any ship or other person employing him, when required to do so, under a penalty in case of default not exceeding £5.[3] And every qualified pilot, while acting in that capacity, must be provided with his licence, and must produce the same to every person by whom he is employed, or to whom he tenders his services as pilot; and if he refuses to do so at the request of such person, he incurs for each offence a penalty not exceeding £10, and is subject to suspension or dismissal by the Pilotage Authority by whom he is licensed.[4]

If any boat or ship, having a qualified pilot on board, leads any ship which has not a qualified pilot on board, when that ship cannot from particular circumstances be boarded, the pilot so leading that ship is entitled to the full pilotage for the distance run, as if he had actually been on board, and had charge of the ship.[5]

Unless under circumstances of unavoidable necessity, no pilot must, without his consent, be taken to sea, or beyond the limits for which he is licensed, in any ship whatever; and every pilot so taken, under circumstances of unavoidable necessity, or without his consent, is entitled, over and above his pilotage, to 10s. 6d. a day, to be computed from and inclusive of the day on which the ship passes the limits to which he was engaged to pilot her,—up to and inclusive of the day of his being returned, in the said ship, to the place where he was taken on board,—or up to and inclusive of such day as will allow him, if discharged from the ship, sufficient time to return thereto; and, in this last case, he is entitled to his reasonable travelling expenses.[6]

Any qualified pilot demanding or receiving, and any captain offering or paying to any pilot, any other rate, in respect of pilotage services, whether greater or less, than the rate for the time being demandable by law,—for each offence incurs a penalty not exceeding £10.[7]

But the Trinity House may by bye-laws repeal or relax this last-mentioned provision within the whole or any part of their district, so far as to allow any pilot or class of pilots under their jurisdiction to demand or receive, and any master to offer or pay, any rate *less* than the rate for the time being demandable by law (35 and 36 Vict., cap. 73, sec. 9).

If any captain, on being requested by a qualified pilot having the charge of his ship to declare her draught of water, refuses to do so, or himself makes, or is privy to any other person making, a false declaration to the pilot of her draught, he incurs a penalty, for every such offence, not exceeding *double* the amount of pilotage which would have been payable to the pilot

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[1] Sec. 348. [2] Sec. 349. [3] Sec. 350. [4] Sec. 351. [5] Sec. 356. [6] Sec 357. [7] Sec. 358.

making this request. And, if any captain or other person interested in a ship makes, or is privy to any other person making, any fraudulent alteration in the marks on the stem or stern-post of that ship, denoting her draught of water, the offender incurs a penalty not exceeding £500.[1]

A qualified pilot supersedes an unqualified pilot, but it is lawful for the captain to pay to such unqualified pilot a proportionate sum for his services, and to deduct the same from the charge of the qualified pilot: and, in case of dispute, the Pilotage Authority by whom the qualified pilot is licensed determines the proportionate sums to which each party is entitled.[2]

An unqualified pilot, taking or continuing in charge of any ship, after a qualified pilot has offered to take charge of her, or using a licence which he is not entitled so to use, for the purpose of making himself appear to be a qualified pilot, he, for each offence, incurs a penalty not exceeding £50.[3]

An unqualified pilot can, within any district, without subjecting himself or his employer to any penalty, take charge of a ship, as pilot, under the following circumstances, viz. :—

When no qualified pilot has offered to take charge of the ship, or made a signal for that purpose: or,

When a ship is in distress, or under circumstances making it necessary for the captain to avail himself of the best assistance which can be found at the time: or,

For the purpose of changing the moorings of any ship in port, or of taking her into or out of any dock, in cases where such act can be done by an unqualified pilot, without infringing the regulations of the port, or any orders which the harbour-master is legally empowered to give.[4]

This latter exemption is nearly the same as section 63 of the Pilots Act, 6 Geo. IV., cap. 125, under which it was held, that a vessel, *having stopped short of the end of her voyage*, and having been removed to her original destination, the London Docks, higher up, under charge of a pilot, whom the captain was bound to employ, injured another ship, this was not a change of moorings, and the owners were not responsible, while the ship was under the pilot's management and control.[5] And when a vessel, in removing, under charge of a licensed pilot, from St. Katherine's Docks to a dry dock in the Port of London, ran foul of and injured a barge, it was held:—1. That the circumstances were under the exemptions in section 63, and that the owner was not bound to employ a pilot; 2. That the words "wanting a pilot," in section 72, are not confined to vessels bound by the Act to take a pilot, but are to be construed as applying to any vessel of which the captain or owner thinks fit to require one; and, 3. As under section 72, the pilot could not lawfully refuse to go on board, and take charge of any vessel wanting a pilot, when required by the captain or owners so to do, he must be considered, when so requested and employed, as acting under some of the provisions of the Act, and not as the private servant of the owner, and that, therefore, the owner was protected by section 55, in respect of the injury occasioned by the act of the pilot while so employed.[6]

The parties following are liable to pay pilotage dues:—1. As to pilotage *inwards*, the owner or captain, or the consignees or agents of the ship,

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[1] Sec. 359. [2] Sec. 360. [3] Sec. 361. [4] Sec. 362.
[5] M'Intosh *v.* Slade, 6 B. and C. 657. [6] Lucy *v.* Ingram, 6 M. and W. 362.

who have paid, or made themselves liable to pay, any other charges on account of the ship in her port of arrival or discharge; and, 2. As to pilotage *outwards*, the same parties in her port of clearance outwards; and, failing payment, these pilotage dues can be recovered in the same manner as penalties of the like amount, *after* a previous *written* demand has been made, and the pilotage dues have remained unpaid for seven days thereafter.[1] But a consignee and agent, not being the owner or captain, thus made liable for pilotage dues, is entitled to retain the amount of all dues so paid by him, out of any moneys in his hands, received on account of the ship, or belonging to its owner, with any reasonable expenses he has incurred.[2]

For each of the following offences, committed by a qualified pilot, he incurs, in addition to his liability for damages to the party wronged, a penalty not exceeding £100, and he is liable to suspension or dismissal by his licensing Pilotage Authority:—

1. Keeps himself, or is concerned in keeping, by an agent, servant, or other person, any public-house or place of public entertainment, or sells, or is concerned in selling, wines, spirituous liquors, tobacco, or tea.

2. Commits any fraud or other offence against the revenues of customs or excise, or the laws of these.

3. Is concerned in any way, directly or indirectly, in any improper practices relative to ships, their tackle, furniture, cargoes, crews, or passengers, or to persons in distress at sea, or by shipwreck, or to their moneys, goods, or chattels (effects).

4. Lends his licence.

5. Acts as pilot while suspended: or,

6. While intoxicated.

7. Employs, or causes to be employed, any boat, anchor, cable, &c., beyond what is necessary for the ship of which he has charge, so as to raise the expense of pilotage.

8. Refuses, or artfully delays, when not prevented by illness or other reasonable cause, to take charge of a ship, within the limits of his licence, on the signal for a pilot being made by the ship, or on being required to take charge by the captain, owner, agent, or consignee, or by any officer of his licensing Pilotage Authority, or by any principal customs officer.

9. Unnecessarily cuts or slips, or causes to be cut or slipped, the cable of any ship.

10. Refuses, on request of the captain, to conduct the ship of which he has charge into any port or place he is qualified to conduct her into, unless on reasonable grounds of danger to the ship.

11. Leaves the ship of which he has charge without consent of the captain, before he has performed the service he was hired for; and every one who procures, encourages, or connives at the commission of any such offence, incurs a penalty of £100, besides his liability for damages.[3]

If, when in charge of a ship, any pilot, by wilful breach or by neglect of his duty, or by reason of drunkenness, does any act tending to the immediate loss, destruction, or serious damage of that ship, or immediately to endanger the life or limb of any person on board,—or if, by wilful breach or by neglect of duty, or by reason of drunkenness, any pilot refuses or omits to do any lawful act, proper and requisite to be done by him for preserving

[1] Sec. 363. [2] Sec. 364. [3] Sec. 365.

that ship from loss, destruction, or serious damage, or for preserving any person belonging to, or on board the same, from danger to life or limb,—he is, for each offence, judged guilty of a misdemeanour, and, if a qualified pilot, he is liable to suspension and dismissal by his licensing Pilotage Authority.[1]

If, by wilful misrepresentation of circumstances, upon which the safety of a ship may depend, *any person* obtains, or endeavours to obtain, the charge of a ship, he and every other person procuring, encouraging, or conniving at the commission of this offence, incurs a penalty not exceeding £100, in addition to any liability for damages; and, if the offender is a qualified pilot, he is also liable to suspension or dismissal by his licensing Pilotage Authority.[2]

LICENSING CAPTAINS AND MATES (GENERAL).—The captain or mate of any ship, on giving due notice, and consenting to pay the usual expenses, can apply to any Pilotage Authority, to be examined as to his ability to pilot the ship of which he is captain or mate, or any one or more ships *belonging to the same owner*, within any part of the district over which that Pilotage Authority has jurisdiction. Thereupon, if the Pilotage Authority thinks fit, such captain or mate may be examined, and, if found competent, a pilotage certificate is granted to him, containing his name, a particular description of the ship or ships for which he has been examined, and a description of the limits (bounds) within which he is to pilot such ship or ships,—these limits being within the jurisdiction of that Pilotage Authority,—which certificate empowers the person named in it to pilot the ship, or any of the therein specified ships, of which he at the time is acting as captain or mate, but no other, within the limits therein described.[3]

In one instance, a captain had applied for a certificate, according to this section, and had passed the requisite examination, and his certificate was lying to be called for by him, but he had not done so, and did not know that it was ready, and would be given him on application:—it was held, that the certificate was not granted to the captain, nor possessed by him, within section 340, so as to enable him to pilot his ship in the specified waters.[4]

This pilotage certificate is in force for not more than one year, unless it is renewed, which may be done, from time to time, by an endorsement under the hand of the secretary, or other proper officer of the Pilotage Authority by which is was granted.[5]

If, on complaint, it appears to the Board of Trade that any Pilotage Authority has, without reasonable cause, refused or neglected to examine any captain or mate who has applied for that purpose,—or, after he has passed the examination, has, without reasonable cause, refused or neglected to grant him a pilotage certificate,—or, that his examination has been unfairly or improperly conducted,—or, that any terms laid on or attempted to be laid on by a Pilotage Authority are unfair or improper,—or, that any pilotage certificate, granted by a Pilotage Authority, has been improperly withdrawn,—if circumstances appear to require it, the Board of Trade may appoint persons to examine such captain or mate, and if he is found competent, may grant him a pilotage certificate, containing the same

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1 Sec. 366. 2 Sec. 367. 3 Sec. 340.
4 *The Killarney*, 5 L. T. *n. s.* 21. 5 Sec. 341.

particulars as in a certificate granted by the Pilotage Authority, upon the terms and conditions, and under the regulations which the Board of Trade think fit. This certificate has the same effect as if it had been granted by the Pilotage Authority, and continues in force for one year, and may be renewed from time to time, either by the Pilotage Authority, as in section 341, or by the Board of Trade.[1]

For this granting or renewal of a pilotage certificate, the captain or mate pays the fees fixed by the Pilotage Authority, with consent of the Board of Trade, and for certificates granted or renewed by the Board of Trade, such fees as may be fixed by that Board, being in no case less than the fees payable by the qualified pilots in the same district,[2] and if it at any time appear to the Board of Trade, or to any Pilotage Authority, that any captain or mate, to whom a pilotage certificate has been granted, has been guilty of misconduct, or has shown himself incompetent to pilot his ship, the Board or Pilotage Authority (as it may be) can thereupon withdraw his certificate, which, from that time, is of no effect.[3]

Trinity House Pilots.—The Corporation of Trinity House, of Deptford Strond, are authorised to license pilots "for the purpose of conducting all ships and vessels sailing and passing as well up as down, or upon the rivers Thames and Medway, and all and every the several channels, creeks, and docks thereof or therein, or leading or adjoining thereto, between Orfordness and London Bridge, as also from London Bridge to the Downs, and from the Downs westward as far as the Isle of Wight, and, in the English Channel, from the Isle of Wight up to London Bridge;" and by section 8 of the 16 and 17 Vict., cap. 129, "from or by Dungeness up the rivers Thames and Medway, and from the south buoy of the Brake to the westward as far as the west end of the Towers."

The Trinity House appoint sub-commissioners for examining pilots in all districts, and no qualified pilot who, on his appointment, has granted the requisite bond, is liable for neglect or want of skill, further than the amount of the penalty in that bond, and the amount of pilotage payable to him for the voyage in which he is engaged;[4] but the Trinity House has power to revoke or suspend the licence of any pilot appointed by them, in such manner and at such time as they think fit.[5]

As to the Trinity House pilots, it is enacted, that, subject to any alteration to be made by the Trinity House, there continues to be paid to all Trinity House pilots, in respect of their pilotage services, such dues as were payable to them immediately before the commencement of the Act, in respect of such services.[6] In the Appendix to the Act is given the table of the rates of pilotage to be demanded and received by pilots licensed by the Trinity House, for piloting ships and vessels within the limits there mentioned; and subject to any alteration to be made by the Trinity House, there must be paid, in respect of all foreign ships trading to and from the Port of London, and not exempted from pilotage, the following pilotage dues, viz.:—as to ships inward, the full amount of dues for the distance piloted, and as to ships outward, the full amount of dues for the distance required by law. Payment of these pilotage dues must be made to the collector of customs in the Port of London, by some one or more of the following persons, viz.:—the captain or other person having the

[1] Sec. 342. [2] Sec. 343. [3] Sec. 344. [4] Sec. 373. [5] Sec. 375. [6] Sec. 380.

charge of the ship, or the consignees or agents thereof, who have paid, or made themselves liable to pay, any other charges for that ship in the Port of London; and such pilotage can be recovered in the same manner as other pilotage dues are declared to be recoverable.[1]

Though this enactment does not extend to foreign ships on the high seas out of British jurisdiction, yet foreign vessels, inward bound, are obliged to take a pilot at a convenient station beyond three miles from the British shore.[2]

Subject to any alteration to be made by the Trinity House, the collector, on receiving any pilotage dues in respect of foreign ships, gives to the person paying the same a receipt in writing; and no officer of customs in the Port of London can grant a clearance or transire for any such foreign ship, without the production of this receipt; and if such a ship attempts to go to sea, without such clearance or transire, any customs officer can detain her until this receipt is produced.[3]

When any difference arises between the captain and the qualified pilot of any ship trading to or from the Port of London, as to her draught of water, —upon application by either party, made,—in case of an inward-bound ship,—within twelve hours after her arrival, or at some time before she begins to discharge her cargo,—and, in case of an outward-bound ship, before she quits her moorings, the Trinity House appoints some proper officer, who measures the ship and settles the difference accordingly; and there must be paid to that officer so measuring, by the party against whom he decides, one guinea, if the ship be below, and half-a-guinea, if she be above, the entrance of the London Docks at Wapping.[4]

The Trinity Houses of the ports of Hull and Newcastle appoint not more than seven, nor less than three sub-commissioners, for the purpose of examining pilots in the districts to which they make such appointments, and with consent of Her Majesty in Council, but not otherwise, may appoint like sub-commissioners for any other district within their respective jurisdictions. But, unless with consent aforesaid, no pilotage district already under sub-commissioners can be extended; and no sub-commissioners so appointed, or to be appointed, are held to be "Pilotage Authorities;" nor does the Merchant Shipping Act confer upon the Commissioners for the pilotage of Kingston-upon-Hull, and of the Humber, any other jurisdiction than they have hitherto exercised.[5]

1. Compulsory Pilotage (General).—Under any alteration by any Pilotage Authority, made under the power granted by section 333 of the Act,—the employment of pilots continues to be compulsory (necessarily forced to be employed) in all districts in which it was compulsory immediately before the Merchant Shipping Act, and all exemptions from compulsory pilotage within these districts, then existing, continue in force; and, after a qualified pilot has offered to take charge of his ship, or has made a signal for that purpose, every captain of an unexempted ship, navigating within any pilotage district, who, either himself navigates his ship, without his being possessed of an adequate pilotage certificate for so doing,—or employs, or continues to employ, an unqualified person to pilot her,—and every captain of an exempted ship, navigating within any pilotage

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[1] Sec. 381.
[2] *The Annapolis, The Jokanna Stoll*, 4 L.T. *n. s.* 417.
[3] Sec. 382.
[4] Sec. 384.
[5] Sec. 387.

district, who employs, or continues to employ, an unqualified pilot to pilot her, after a qualified pilot has offered to take charge, or has made a signal for that purpose,—he incurs, for every such offence, a penalty of double the amount of pilotage for that ship.[1]

Under the corresponding section in previous statutes, it has been held, that, in order to make a captain liable in a penalty for continuing an unqualified pilot or person in charge, after a qualified pilot has offered to take charge, it must be proved that this offer was made to or in presence of the captain.[2] And in the case of the *Killarney*, already referred to, the party had been examined for a pilotage certificate to enable him to pilot his vessel in certain waters, and his certificate was lying, signed and sealed by the Pilotage Authorities, to be called for by him, but he did not know it was ready, and would be given him on application:—it was held, that this certificate had not been granted to him, nor was possessed by him in terms of section 340 *ut ante*, and of this section 353, so as to enable him to pilot his vessel within the waters stated.

The captain of every ship carrying passengers between any place situate in the United Kingdom or the islands of Guernsey, Jersey, Sark, Alderney, and Man, and any other place so situate, when navigating upon any waters within the limits of any district for which pilots are licensed by any Pilotage Authority, unless he or his mate has a pilotage certificate enabling either to pilot the ship within such district, or a certificate, as previously mentioned, applicable to such district and to that ship, must employ a qualified pilot to pilot his ship; and, if he fails to do so, he, for every offence, incurs a penalty not exceeding £100.[3]

This section making pilotage compulsory upon certain vessels, is not to be limited by the preceding section 353, that all existing exemptions from compulsory pilotage should continue; and therefore, an Irish trader "using the navigation of the rivers Thames and Medway" (the words of exemption in section 59 of 6 Geo. IV., cap. 125), and carrying passengers, is bound to employ a licensed pilot in the Thames.[4]

But the captain and mate of a ship, as in section 345, *i.e.*, home-trade passenger ships, employed in carrying passengers in the United Kingdom, and the islands of Guernsey, Jersey, Sark, Alderney, and Man, and the continent of Europe between the river Elbe and Brest inclusive, can apply for a certificate to the Board of Trade, and on satisfactory proof of his having continuously piloted any ship within the limits of any pilotage district, or any part or parts thereof, for two years before, or on satisfactory proof of his competency, by examination or otherwise, the Board of Trade cause to be granted him, or to be endorsed on his certificate of competency or service, a certificate that he is authorised to pilot any ship or ships belonging to the same owner, and of a draught of water not greater than the draught stated in the certificate, within the bounds mentioned in section 354. This certificate continues in force for the time directed by the Board, and entitles the captain or mate named in it to conduct the ship or ships therein specially named, within the limits or bounds therein described, to the same extent as if section 354 had not been enacted, but not further or otherwise. On applying for this certificate, or any renewal of it, the captain or mate

[1] Sec. 353.
[2] Peake *v.* Carrington, 2 B. and B. 399.
[3] Sec. 354.
[4] *The Temora*, 1 Lushington, 17.

pays to the Board the fees, not exceeding those payable for a captain's certificate of competency.[1]

Under this section, the Board of Trade can grant these certificates to the captains or mates of the ships specially mentioned in section 354, and of such ships only; but, if the certificate describe the ship as owned by a person who was not owner at the time of granting it, the certificate is of no force.[2]

2. TRINITY COMPULSORY PILOTAGE.—Subject to any alteration to be made by the Trinity House, and to the exemptions from compulsory pilotage after mentioned, the pilotage districts of the Trinity House, within which the employment of pilots is compulsory, are the London District, and the Trinity Out-port Districts, as before defined; and the captain of every ship navigating within any port of the London District, or of the Out-port Districts, who, after a qualified pilot has offered to take charge of his ship, or has made a signal for that purpose, either himself pilots his ship without possessing a certificate enabling him to do so, or employs or continues to employ an unqualified person to pilot her, he, for every such offence incurs a penalty of *double* the amount of pilotage demandable for the conduct of such ships,[3]—and likewise, if the Trinity House certify in writing, under their common seal, that the prosecutor is at liberty to proceed for the recovery of an additional penalty, the captain incurs, for every such offence, an additional penalty of £5 for every fifty tons burden of his ship.[4]

Subject to any alteration to be made by the Trinity House, a sufficient number of qualified pilots must always be ready to take charge of ships coming from the westward past Dungeness; and the Trinity House makes such regulations with respect to the pilots under their control as may be necessary in order to provide for continuous supply of qualified pilots for such ships, and to ensure their constant attendance upon and due performance of their duty, both night and day, whether by cruising between the South Foreland and Dungeness, or by going off from shore upon signals made for the purpose, or by both of such means, or by any other means, and whether in rotation or otherwise, as the Trinity House think fit.[5]

Subject to any alteration to be made by the Trinity House, every captain of any ship,—coming from the westward, and bound to any place in the rivers Thames and Medway (unless she has a qualified pilot on board, or is exempted from compulsory pilotage),—must, on the arrival of his ship off Dungeness, and thenceforth until she has passed the south buoy of the Brake, or a line drawn from Sandown Castle to that buoy,—or until a qualified pilot has come on board,—display and keep flying the usual signal for a pilot. If a qualified pilot is within hail,—or is approaching and within half a mile,—and has the proper distinguishing flag flying in his boat,—the captain must,—by heaving to in proper time,—or shortening sail,—or by any practicable means consistent with the safety of the ship,—facilitate such pilot getting on board, and must gave the charge of piloting his ship to that pilot; or, if there are two or more pilots offering at the same time, to such one of them as is, according to the regulations for the time being in force, entitled or required to take the charge. If any captain fails to display and keep flying the usual signal for a pilot, in manner

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[1] Sec. 355. [2] *The Earl of Auckland*, 1 Lushington, 164; 5 L. T. *n. s.* 558.
[3] Sec. 353. [4] Sec. 376. [5] Sec. 377.

before required,—or to facilitate any qualified pilot getting on board, as before required,—or to give the charge of piloting his ship to a qualified pilot, as before mentioned,—he incurs a penalty not exceeding *double* the sum which might have been demanded for the pilotage of his ship,—such penalty being to be paid to the Trinity House, and to be carried to the account of the Trinity House Pilot Fund.[1]

For the exemption of the ships enumerated in section 379, and, when not carrying passengers, from compulsory pilotage in the London District, and in the Trinity House Out-port Districts, see the following sections.

3. Exemptions from Compulsory Pilotage.—By section 353, all exemptions from compulsory pilotage continue in force, in all districts in which the employment of pilots continues to be compulsory, as these exemptions existed at the date of the Merchant Shipping Act, and are contained in the Pilot Act, 6 Geo. IV., cap. 125, which, in regard to these, this section continues.[2]

These exemptions are thus given in section 59 of the 6 Geo. IV.:—"The master of any collier, or of any ship or vessel trading to Norway, or to the Cattegat or Baltic, or round the North Cape, or into the White Sea, on their inward or outward voyages, or of any constant trader inwards from the ports between Boulogne inclusive, and the Baltic (all such ships and vessels having British registers and coming up by the North Channel, but not otherwise),—or of any Irish trader using the navigation of the rivers Thames and Medway,—or of any ship or vessel employed in the regular coasting trade of the kingdom,—or of any ship or vessel wholly laden with stone from Guernsey, Jersey, Alderney, Sark, or Man, and being the production thereof,—or of any ship or vessel, not exceeding the burden of sixty tons, and having a British register (excepting, by section 60, ships and vessels not exceeding sixty tons burden, and not having a British register, if permitted and authorised to be piloted and conducted without having a licensed pilot on board),—or of any other ship or vessel whatever, within the limits of the port or place to which she belongs, the same not being a port or place in relation to which particular provision hath heretofore been made for the appointment of pilots,—may lawfully, and without being subject to any of the penalties by this Act imposed, pilot or conduct his own ship or vessel, when and so long as he shall conduct or pilot the same without the aid or assistance of any unlicensed pilot, or other person or persons than the ordinary crew of the ship or vessel."

Under these exemptions, the captain of a vessel carrying passengers on her outward voyage to the Baltic, having been convicted for having refused to allow a duly qualified pilot at Gravesend to take charge of the vessel on her outward voyage:—it was held, that the vessel was not liable to compulsory pilotage,—and, therefore, this conviction was set aside.[3] And a British ship, trading between Boulogne and the Baltic, whether carrying passengers or not, is not bound to employ a licensed pilot in the Thames.[4] Likewise the words, "within the limits of the port or place to which she belongs," exempt the captain of a ship from the necessity of taking a pilot, so long as his vessel is within the limits of her port.[5]

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[1] Sec. 378.
[2] *The Earl of Auckland*, 10 W. R. 124; Stanton *v.* Banks, 8 El. and Bl. 445.
[3] Stanton *v.* Banks, *ut supra.* [4] *The Earl of Auckland*, 10 W. R. 124.
[5] *The Stettin*, 6 L. T. *n. s.* 613.

By section 379 of the Merchant Shipping Act, the following ships, when not carrying passengers, are exempted from compulsory pilotage in the London District and in the *Trinity House* Out-port Districts :—

(1.) Ships employed in the coasting trade of the United Kingdom.

(2.) Ships of not more than sixty tons burden.

(3.) Ships trading to Boulogne or to any place in Europe north of Boulogne.

(4.) Ships from *Guernsey, Jersey, Alderney, Sark,* or *Man,* which are wholly laden with stone being the produce of those islands.

(5.) Ships navigating within the limits of the port to which they belong.

(6.) Ships passing through the limits of any pilotage district on their voyages between two places both situate out of such limits, and not being bound to any place within such limits, nor anchoring therein.

The third exemption has been held to extend to vessels coming from a place north of Boulogne to London, so that a vessel, not carrying passengers on a voyage from Cronstadt to London, is exempted from compulsory pilotage in the Thames.[1]

By section 41 of the Merchant Shipping Acts Amendment Act (25 and 26 Vict., cap. 63), this last proviso is extended, so that the captains and owners of ships passing through the limits of any pilotage district in the United Kingdom, on their voyages between two places, both out of these districts, are exempted from any obligation to employ a pilot within any such pilotage district, or to pay pilotage dues when not employing a pilot therein. But this exemption does not apply to ships loading or discharging at any place within such pilotage district, or at any place above (*i.e.*, more inland than) such pilotage district on the same river, or its contributive waters. And, by the fourth head of section 89 of the same Act, the Board of Trade can, by provisional order, exempt the captain and owners of all ships, or of any classes of ships, from being obliged to employ pilots in any pilotage district, or in any part of a pilotage district, or from being obliged to pay for pilots, when not employing them, in any pilotage district, or in any part thereof, and the Board can affix any terms and conditions to these exemptions.

And in regard to the responsibility of owners or captains, while the ship is under compulsory pilotage, section 388 of the Merchant Shipping Act enacts, that no owner or captain is answerable to any person whatever for any loss or damage occasioned by the *fault* or *incapacity* of any qualified pilot acting in charge of his ship within any district,—when the employment of such a pilot is *compulsory* by law.

As this section deprives parties injured of the remedy they would otherwise have had, it is to be strictly construed,[2] and only protects the owner from loss or damage when that loss or damage was occasioned by the *sole* fault or incapacity of the pilot, which fact it lies upon the owner to prove, and not merely that the crew were under the pilot's orders at the time, but that the order which caused the damage was actually given by the pilot.[3] And therefore owners will not be freed from liability for damage done by their vessel, unless they prove, that the damage was

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[1] *The Wesley*, 1 Lushington, 268. [2] *The General Detaen*, 1 Swabey, 6.
[3] North German Steam-Packet Co. *v.* Elder, 14 Moore, P. C. C. 241.

caused exclusively by the negligence or unskilfulness of the pilot, and that no blame was ascribable to the captain and crew.[1]

But, if there is no proof *that the piloting was compulsory*, no exemption can be claimed by the owners under this section, on the ground that the vessel was in charge of a pilot;[2] and, when the piloting is not compulsory, —the ship being an exempted ship,—though within a compulsory pilotage district, a qualified pilot, if taken, is the servant of the owners, and his presence does not free them from liability.[3]

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[1] *The Mobile*, 1 Swabey, 127. [2] *The Fearless*, 30 L. T. 89.
[3] *The Earl of Auckland*, *ut ante*.

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III.—AFFREIGHTMENT OF SHIPS.

I.—CONVEYANCE OF PASSENGERS.

In the conveyance of passengers by sea, the great responsibility of the person in command of the vessel,—to whose skill and charge the lives and property of all on board are intrusted,—necessarily confers on him,—on ordinary occasions,—an extensive,—and,—on extraordinary occasions,—an almost unlimited authority; and, implicit obedience to his commands in everything necessary for the preservation of these lives and of that property, is an essential duty incumbent upon every passenger on board. Therefore, the captain is entitled to demand from the passengers, not only submission to the ordinary discipline of the ship, but also, in time of danger, a ready compliance with his orders, in assisting to do all that he considers necessary for the security of the ship, and the safety of all.[1] And a passenger on board is bound, at the captain's call in the time of danger, to do that which the captain deems necessary for the safety and preservation of all; and he has full control over the passengers, in regard to all that *is* necessary to the safe and proper conduct of the vessel, though the exercise of this power, in each instance, will be determined and limited by the necessity of each particular case.[2]

But, in a common danger, though the assistance of passengers, voluntarily remaining on board, and working at the pumps, does not entitle them to salvage reward,[3] yet, when this voluntary assistance by a passenger is great, and beyond what can be fairly and reasonably expected of him, and rendered at the risk of his own personal safety, when the captain and part of the crew had left,—he will be entitled to salvage reward for his extraordinary services in the preservation of the ship.[4]

Passengers must behave in a decorous and becoming manner to the captain and the other passengers; for, if their conduct is vulgar, offensive, indecorous, and unbecoming,—or, if any of them threaten the captain,—he will be entitled to punish them, in such manner as will best vindicate and ensure his authority.[5] But, the exercise of this authority must be confined to the necessity of the case; and the orders of the captain must be enforced and justified on the ground of that necessity, and within its limits,—otherwise the captain will expose himself to a claim of damages on the part of the passenger who has been ill-treated.[6]

Where the passage-money from England to Madras was paid before the voyage commenced, and the ship was stated to sail on a certain day,—this was held to be mere matter of representation, but not an essential part of the contract: and, if the ship sailed within a reasonable time, a passenger was held not entitled to damages in consequence of the delay in sailing.[7] But, where it was stated in printed circulars, that ships "will be despatched on the appointed days fixed (wind and weather permitting), *for which written guarantees will be given*,"—a ship being named as to sail from a

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1 Boyce *v.* Bayliffe, 1 Camp. 58.
2 King *v.* Franklin, 1 F. and F. 360.
3 *The Vrede*, 1 Lushington, 322.
4 Newman *v.* Walters, 3 B. and P. 612.
5 Prendergast *v.* Compton, 8 C. and P. 454.
6 Ibid.
7 Yates *v.* Duff, 5 C. and P. 569.

certain port on 25th August, and "that a deposit of one-half of the passage-money had to be paid at the time the berths are engaged, the balance to be paid prior to granting the embarkation order;"—in terms of this circular, a party engaged a berth on board the ship named, and paid the deposit,—no written guarantee being given; but the ship, though not prevented by wind or weather, did not arrive at the shipping port till 1st September:—it was held, that the statement in the circular was not a mere representation, but a warranty, that the ship would sail on the appointed day, and as she did not, the party was entitled to recover the amount of his deposit and his expenses by the delay at the shipping port.[1] If, however, the passage-money is paid beforehand, but after commencing, the vessel is prevented from completing the voyage, by the perils of navigation,—there is no action for a repetition of the passage-money so paid,[2] and the captain has a right to retain the luggage of a passenger for his passage-money, but not the clothes he is wearing, when about to leave the ship.[3]

The Merchant Shipping Act, 1854, enacts the following regulations as to "passenger steamers:"—

The expression "passenger steamer" is held to include every British steam-ship carrying passengers to, from, or between any place or places in the United Kingdom,—excepting steam ferryboats working in chains, commonly called "steam bridges;" and the word "passenger" includes any persons carried in a steam-ship other than the captain and crew, and the owner, his family and servants.[4] The term "home-trade passenger ship" means every home-trade ship employed in carrying passengers.[5]

Every passenger steamer has to be surveyed once a year at least, as will now be mentioned (Merchant Shipping Act, 1872, 35 and 36 Vict., cap. 73, sec. 8).

The Board of Trade, from time to time, appoints such number of fit and proper persons to be shipwright-surveyors and engineer-surveyors for the purposes of the Act, at such ports and places as it thinks proper, and also appoints a Surveyor-General for the United Kingdom, and may, from time to time, remove these surveyors, or any of them, and, from time to time, fix and alter the rates of remuneration to be received by them.[6]

In the execution of their duties, these surveyors can go on board any steam-ship, at all reasonable times, and inspect the same, or any part thereof, or any of the machinery, boats, equipments, or articles on board thereof, or any certificate of the captain or mate, to which the provisions or regulations apply,—not unnecessarily detaining or delaying the ship from proceeding on any voyage. If, in consequence of any accident to any such passenger steam-ship, or, for any other reason, they consider it necessary so to do,—they can require the ship to be taken into dock, for the purpose of surveying the hull thereof,—and any person who hinders any such surveyor from going on board, or otherwise obstructs him in the execution of his duty,—incurs a penalty not exceeding £5.[7]

The surveyors execute their duties under the direction of the Board of Trade, and the Board makes regulations as to the manner in which the

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[1] Cranston *v.* Marshall, 5 W. H. and G. 395.
[2] Gillan *v.* Simpkin, 4 Camp. 241.
[3] Woolf *v.* Summers, 2 Camp. 631.
[4] Sec. 303.
[5] Sec. 2.
[6] Sec. 305.
[7] Sec. 306.

surveys have to be made, and as to the notice to be given to the surveyors when surveys are required, and as to the amount and payment of any travelling or other expenses incurred by them in the execution of their duties, and can thereby determine the persons by whom, and the conditions under which, this payment is to be made.[1] And every surveyor who demands or receives, directly or indirectly, from the owner or captain of any ship thus surveyed by him, any fee or remuneration whatever, for or in respect of such survey, otherwise than as the officer and by the direction of the Board of Trade, incurs a penalty not exceeding £50.[2]

The owner of every passenger steamer which carries more than twelve passengers must cause the same to be surveyed, as after mentioned, by one of the qualified shipwright-surveyors and by one of the qualified engineer-surveyors,—the shipwright-surveyor being, in the case of iron steamers, a person who is, in the judgment of the Board of Trade, properly qualified to survey such ships. If satisfied they can do so with propriety, these surveyors give to the owner the following declarations :—

The declaration of the shipwright-surveyor must contain statements of the following particulars :—

1. That the hull of the ship is sufficient for the service intended, and is in good condition.

2. That the partitions, boats, life-buoys, lights, signals, compasses, and shelter for deck-passengers, and the certificates of the captain and mate or mates, are such, and in such condition, as are required by the Act.

3. The time (if less than six months) for which the hull and equipments will be sufficient.

4. The limits (if any) beyond which, as regards the hull and equipments, the ship is, in the surveyor's judgment, not fit to ply.

5. The number of passengers which the ship is, in the judgment of the surveyor, fit to carry,—distinguishing, if necessary, between the respective numbers to be carried on the deck and in the cabins, and in different parts of the deck and cabins; such numbers being subject to such conditions and variations,—according to the time of the year,—the nature of the voyage,—the cargo carried,—or other circumstances,—as the case may require.

And the declaration of the engineer-surveyor must contain statements of the following particulars :—

1. That the machinery of the ship is sufficient for the service intended, and is in good condition.

2. The time (if less than six months) for which such machinery will be sufficient.

3. That the safety valves are such, and in such condition, as are required by the Act.

4. The limits of the weight to be placed on the safety valves.

5. The limits (if any) beyond which, as regards the machinery, the ship is, in the surveyor's judgment, not fit to ply.

And these statements must be in the form directed by the Board of Trade.[3]

Within fourteen days after receiving the same respectively, the owner must transmit these declarations to the Board of Trade; and, should they fail

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[1] Sec. 307. [2] Sec. 308. [3] Sec. 309, and 39 and 40 Vict., cap. 80, sec. 16.

to do so, they forfeit a sum not exceeding ten shillings for every day that the sending of these declarations is delayed, and that sum must be paid upon delivery of the certificate after mentioned, in addition to the fee payable for the same, and has to be applied in the same manner as these fees.[1]

These half-yearly surveys were to be made in the months of April and of October, and the declarations transmitted on or before the 30th day of April and 31st day of October respectively; but if the owner of any passenger steamer should be unable to have the same surveyed in the month of April or October,—either by reason of his ship being absent from the United Kingdom during the whole of these periods respectively, —or by reason of the ship or the machinery thereof being under construction or repair,—or of the ship being laid up in dock,—or for any other reason satisfactory to the Board of Trade,—then, he must have the same surveyed as aforesaid as soon thereafter as possible, and must transmit such declarations to the Board of Trade within fourteen days after the receipt thereof,—together with a statement of the reasons which have prevented the survey of the ship at the time before prescribed: and, in case of delay in transmitting the declarations, the owner is liable to a forfeiture similar to that mentioned in the foregoing section.[2]

But by section 34 of the Merchant Shipping Act Amendment Act, 1862, it is enacted, that it shall not be necessary that the surveys of passenger steamers be made in the months of April and October; but no declaration must be given by a surveyor, in terms of section 311, for a period exceeding six months, and no certificate granted by the Board of Trade, conform to the following section, remains in force more than six months from its date.

Upon receiving these declarations, the Board of Trade, if satisfied that the foresaid provisions have been complied with, causes a certificate in duplicate to be prepared and issued, to the effect that the provisions of the law with respect to the survey of the ship and the transmission of declarations as aforesaid have been complied with; and this certificate states the limits (if any) beyond which, according to the declaration of the surveyors, the ship is not fit to ply. It also contains a statement of the number of passengers which, according to the declaration of the shipwright-surveyor, the ship is fit to carry, distinguishing, if necessary, between the respective numbers to be carried on the deck and in the cabins, and in different parts of the deck and cabins,—this number being subject to such conditions and variations, according to the time of year,—the nature of the voyage,—the cargo carried,—and other circumstances, as the case may require.[3]

If the shipowner feels aggrieved by the declaration of the shipwright or engineer surveyor, made under section 309 of the principal Act, or by the refusal of such declaration,—or if he feels aggrieved by the refusal of a certificate of clearance under section 312, or of a certificate as to lights and fog-signals under section 30 of the Merchant Shipping Act Amendment Act, 1862, he may appeal to the Court of Survey for the port or district where the ship for the time being is. The court report to the Board of Trade on the question raised by the appeal, and the Board will

[1] Sec. 310. [2] Sec. 34. [3] Sec. 312.

then, if satisfied that injustice has been done, give the necessary directions for the granting or amending of the certificate. But, in order, if possible, to avoid the necessity of any appeal, the owner is entitled to require that the surveyor be accompanied, on the survey, by some person appointed by the owner; and, in such case, if the two persons agree, there can be no appeal (39 and 40 Vict., cap. 80, sec. 14).

The Board of Trade transmits this duplicate certificate to the superintendent, or to some other public officer, at such port as the owner mentions for the purpose, or at the port where the owner or his agent resides, or where the ship was surveyed, and is for the time lying,—and causes notice of such transmission to be given, by post or otherwise, to the owner or his agent; and the superintendent or officer delivers such duplicate certificate to the owner, captain, or agent, on his applying and paying the fees and other sums (if any) payable in that behalf. In proving the due issue and transmission to the owner, captain, or agent, of this certificate, it is sufficient to show that the same has been duly received by the superintendent or other public officer as aforesaid, and that due notice of the transmission thereof has been given to the owner, captain, or agent.[1]

The owner of every passenger steamer requiring a certificate as aforesaid, must pay for every certificate granted by the Board of Trade such fees as the Board may direct, not exceeding the fees in the Table T annexed to the Merchant Shipping Act.[2]

Where the legislature of any British possession provides for the survey of and grant of certificates for passenger steamers, and the Board of Trade report to Her Majesty that they are satisfied that the certificates are to the like effect, and are granted after a like survey, and in such manner as to be equally efficient with the certificates granted for the same purpose in the United Kingdom under the Acts relating to merchant shipping, Her Majesty may, by Order in Council, declare that the said certificates shall be of the same force as if they had been granted under the said Acts; and that all or any of the provisions of the said Acts which relate to certificates granted for passenger steamers under those Acts shall, either without modification, or with such modifications as to Her Majesty may seem necessary, apply to the certificates referred to in the Order; and may impose such conditions, and make such regulations with respect to the said certificates, and to the use, delivery, and cancellation thereof, as to Her Majesty may seem fit, and impose penalties not exceeding £50 for the breach of such conditions and regulations (39 and 40 Vict., cap. 80, sec. 17).

And where a foreign ship is a passenger steamer subject to the principal Act, and the Acts amending the same, or an emigrant ship subject to the Passengers Act, 1855, and the Acts amending the same, and the Board of Trade are satisfied, by the production of a foreign certificate of survey, attested by a British consular officer at the port of survey, that such ship has been officially surveyed at a foreign port, and are satisfied that the requirements of the said Acts, or any of them, are proved by such survey to have been substantially complied with, the Board may, if they think fit, dispense with any further survey of the ship in respect of

[1] Sec. 313. [2] Sec. 314.

the requirements so complied with, and give, or direct one of their officers to give, a certificate, which will have the same effect as if given upon survey under the said Acts, or any of them: but Her Majesty may by Order in Council direct that this provision shall not apply in the case of an official survey at any foreign port at which it appears that corresponding provisions are not extended to British ships (sec. 19).

And so long as a steam-ship is an emigrant ship, that is, a passenger ship within the meaning of the Passengers Act, 1855, and the Acts amending the same, and the provisions contained in the said Passengers Acts as to the survey of her hulk, machinery, and equipments have been complied with (as to which see *post*, EMIGRATION AND EMIGRANT SHIPS), she is not subject to the foregoing provisions with respect to the survey of and certificate for passenger steamers (sec. 18).

No certificate is in force for the purposes of the Act after the date fixed by the Board of Trade for the expiry thereof; and no certificate is in force after notice is given by the Board, to the owner or captain of the ship to which the same relates, that the Board has cancelled or revoked the same. But if any passenger steamer is absent from the United Kingdom at the time when her certificate expires, no penalty is incurred for the want of a certificate, until she first begins to ply with passengers, after her next subsequent return to the United Kingdom; and the Board can require any certificate which has expired, or has been revoked or cancelled, to be delivered up as it directs, and any captain or owner who, without reasonable cause, neglects or refuses to comply with such requirement, incurs a penalty not exceeding £10.[1]

The Board of Trade can revoke and cancel certificates, in any case in which the Board have reason to believe:—

1. That the declarations of the sufficiency and good condition of the hull, equipments, and machinery of any passenger steamer, or either of them, have been fraudulently or erroneously made: or,

2. That such certificate has otherwise been issued upon false or erroneous information: or,

3. That since the making of such declaration, the hull, equipments, or machinery of the ship have sustained any injury, or are otherwise insufficient. And if the Board of Trade think fit, they can, in every such case, require the owner to have the hull, equipments, or machinery of such ship again surveyed, and to transmit a further declaration or declarations of the sufficiency and good condition thereof, before giving any certificate or granting a fresh one in lieu thereof.[2]

The owner or captain of every passenger steamer must, immediately on the transmission of such certificate to him or his agent, cause one of the duplicates thereof so transmitted to be put up in some conspicuous part of the ship, visible to all persons on board the same, and must cause it to be there continued, so long as such certificate remains in force and the ship is in use; and in case of failure, the owner, or captain, for every default, incurs a penalty not exceeding £10.[3]

No passenger steamer carrying more than twelve passengers can lawfully proceed to sea, or upon any voyage or excursion, with any passengers on board, unless the owner or captain thereof has received from the Board such

[1] Sec. 315. [2] Sec. 316. [3] Sec. 317.

a certificate as before required,—this certificate being a certificate applicable to the voyage or excursion on which the ship is about to proceed. No officer of customs must grant any clearance or transire for any passenger steamer, unless upon production of such certificate as aforesaid (being a certificate then in force and applicable as aforesaid); and, if any passenger steamer attempts to ply or go to sea without such production, any customs officer can detain her until the certificate is produced. And if any passenger steamer plies or goes to sea with any passengers on board, without having one of the duplicates of the certificate—(being a certificate then in force, and applicable as aforesaid)—so put up in some conspicuous part of the ship, as before required,—the owner, for such offence, incurs a penalty not exceeding £100,—and the captain also incurs a further penalty not exceeding £20.[1]

If the owner or captain, or other person in charge, receives on board thereof, or on or in any part thereof, or if his ship have on board, or on or in any part thereof, any number of passengers which, having regard to the time, occasion, and circumstances of the case, is greater than the number of passengers allowed by the certificate, the owner or captain incurs a penalty not exceeding £20, and also an additional penalty, not exceeding five shillings, for every passenger over and above the number allowed by the certificate,—or if the fare of any of the passengers on board exceeds five shillings, not exceeding *double* the amount of the fares of all the passengers, who are over and above the number so allowed,—such fares being estimated at the highest rate of fare payable by any passenger on board.[2] And every person who knowingly and wilfully makes, or assists in making, or procures to be made, a false or fraudulent declaration or certificate, with respect to any passenger steamer requiring a certificate under the Merchant Shipping Act,—or who forges, assists in forging, or procures to be forged,—fraudulently alters, assists in fraudulently altering, or procures to be fraudulently altered, any declaration or certificate thus required, —or any words or figures in any such declaration or certificate, or the signature thereto,—he is held to be guilty of a misdemeanour.[3]

From time to time the surveyors foresaid make such returns as the Board of Trade requires, as to the build, dimensions, draught, burden, rate of sailing, room for fuel, and the nature and particulars of the machinery and equipments of the ships surveyed by them. And the owner, captain, and engineer of any such ship must, on demand, give these surveyors all information and assistance in their power for these returns, as they require. Any owner, captain, or engineer, who wilfully refuses or neglects, on being applied to for that purpose, to give such information or assistance, is liable to a penalty not exceeding £5.[4]

When any steam-ship has sustained or caused any accident, occasioning loss of life or any serious injury to any person, or has received any material damage affecting her seaworthiness or her efficiency,—either in her hull, or in any part of her machinery,—the owner or captain must, within twenty-four hours after the happening of such accident or damage, or as soon thereafter as possible, send to the Board of Trade, by letter signed by the owner or captain, a report of such accident or damage, and

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[1] Sec. 318, as amended by 39 and 40 Vict., cap. 80.
[2] Sec. 319.
[3] Sec. 320.
[4] Sec. 321.

of the probable occasion thereof,—stating the name of the ship, the port to which she belongs, and the place where she is: and if the owner or captain neglects so to do, he, for such offence, incurs a penalty not exceeding £50.[1]

If the managing owner, or, in the event of there being no managing owner, the ship's husband of any British ship have reason, owing to the non-appearance of such ship, or to any other circumstance, to apprehend that such ship has been wholly lost, he must send to the Board of Trade notice in writing of such loss, and of the probable occasion thereof, stating the name of the ship and her official number (if any), and the port to which she belongs: and if he neglect to do so within a reasonable time, he incurs a penalty not exceeding £50 (Merchant Shipping Act, 1873, 36 and 37 Vict., cap. 85, sec. 22).

In every case of collision, in which it is practicable so to do, the captain must, immediately after the occurrence, cause a statement thereof, and of the circumstances under which the same occurred, to be entered in the official log-book (if any), and this entry must be signed by the captain, and also by the mate or one of the crew; and if he fail to do so, he incurs a penalty not exceeding £20.[2]

The following rules as to boats and life-buoys for sea-going ships generally require also to be attended to:—

1. No decked ship (unless ships used solely as steam-tugs, and ships engaged in the whale-fishing) must proceed to sea from any place in the United Kingdom, unless it is provided, according to its tonnage, with boats duly supplied with all requisites for use, and not being fewer in number nor less in their cubic contents than the boats, the number and cubic contents of which are specified in Table S in the Schedule of the Act, for the class to which the ship belongs.

2. No ship carrying more than ten passengers must proceed to sea from any place in the United Kingdom, unless, in addition to the boats before required, she is also provided with a lifeboat, furnished with all requisites for use, or unless one of her boats, as before required, is rendered buoyant, after the manner of a lifeboat.

3. No ship, as now mentioned, must proceed to sea unless she is also provided with two life-buoys; and these boats and life-buoys must be kept so as to be, at all times, fit and ready for use; but this enactment with respect to boats and life-buoys does not apply in any case in which a certificate has been duly obtained under the Passengers Act.[3]

The following penalties are imposed for neglect of these rules:—

1. If any ship, required by the Act to be provided with boats or life-buoys, proceeds to sea without being so provided therewith, or if any such boats or life-buoys are lost or rendered unfit for service in the course of the voyage, through the wilful fault or negligence of the owner or captain; or,

2. If, in case of any of these boats or life-buoys being accidentally lost or injured in the course of the voyage, the captain wilfully neglects to replace or repair the same on the first opportunity; or,

3. If such boats and life-buoys are not kept so as to be, at all times, fit and ready for use:—then, if the owner appears to be in fault, he incurs a penalty not exceeding £100,—and if the captain appears to be in fault, he incurs a penalty not exceeding £50.[4]

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[1] Sec. 326. [2] Sec. 328. [3] Sec. 292. [4] Sec. 293.

No officer of customs can grant a clearance or transire for any ship required to be thus provided with boats or with life-buoys, unless the same is duly so provided; and, if any such ship attempts to go to sea without such clearance or transire, any officer of the customs can detain her until she is so provided.[1]

The Board of Trade may, at the request of the owner, authorise the reduction of the number and the variation of the dimensions of the boats required by section 292 of the principal Act, and also the substitution of rafts or other appliances for saving life for any such boats, so nevertheless that the boats so reduced or varied, and the rafts or other appliances so substituted, be sufficient for the persons carried on board the ship (Merchant Shipping Act, 1873, 36 and 37 Vict., cap. 85, sec. 15).

As to the misconduct of passengers in passenger steamers, the following offences are punishable by a penalty, and the offenders are punishable as follows :—

1. Any person who, being drunk or disorderly, has been, on that account, refused admission into any duly surveyed passenger steamer, by the owner or any person in his employ, and who, after having had the amount of his fare (if it has been paid) returned or tendered to him, nevertheless persists in attempting to enter such steamer :

2. Any person who, being drunk or disorderly on board, is requested, by the owner or any person in his employ, to leave the same, at any place in the United Kingdom, and having the full amount of his fare (if it has been paid) returned or tendered to him, refuses to comply with such request :

3. Any person on board such a steamer who, after warning by the captain or any other officer, molests or continues to molest any passenger :

4. Any person who, after having been refused admission on account of the steamer being full, and who, after having had his full fare (if he has paid the same) returned or tendered to him, yet persists in attempting to enter the steamer :

5. Any person having got on board, who, on being requested as aforesaid, on the like account, to leave the steamer before leaving the place at which he got on board, and having his full fare (if paid) returned or tendered to him, refuses to comply with this request :

6. Any person who travels, or attempts to travel, in any duly surveyed passenger steamer, without having previously paid his fare, and with intent to avoid payment thereof :

7. Any person who, having paid his fare for a certain distance, knowingly and wilfully proceeds in any such steamer beyond such distance, without previously paying the additional fare for the additional distance, and with the intent to avoid payment thereof :

8. Any person who, knowingly and wilfully, refuses or neglects, on arriving at the point to which he has paid his fare, to quit such steamer : and,

9. Any person on board who does not, on being requested by the captain or other officer, either pay his fare or show the usual ticket for his having paid it :—

[1] Sec. 294.

For every such offence, the offender is liable to a penalty not exceeding forty shillings, in addition to any fare payable by him.[1]

And any person on board such a steamer, who wilfully does, or causes to be done, anything in such a manner as to injure or obstruct any part of the machinery or tackle, or to obstruct, hinder, or molest the crew in the navigation or management, or otherwise in the execution of their duty upon or about that steamer,—he is liable, for every such offence, to a penalty not exceeding £20.[2]

Every such offender who refuses, on application of the captain, or of any other person in the employ of the owner, to give his name and address, or who, on such application, gives a false name or address, incurs a penalty not exceeding £20, to be paid to the owner;[3] and the captain or other officer of a duly surveyed passenger steamer, and all called by him to his assistance, can lawfully detain any person who has committed any of the foresaid offences, and whose name and address are unknown to him, and can convey the offender, with all convenient speed, before some justice, without any warrant or authority, who by the Act has jurisdiction to try the case, which he proceeds to hear and determine.[4]

The captain of any home-trade passenger steam-ship can refuse to receive on board thereof any person who, by reason of drunkenness or otherwise, is in such a state, or misconducts himself in such a manner, as to cause annoyance to other passengers on board,—or, if such person is on board, the captain can put him on shore at any convenient place;—and no person so refused admittance or put on shore is entitled to the return of any fare he may have paid.[5]

I. Emigration and Emigrant Ships.—These are now regulated by the Act 18 and 19 Vict., cap. 119, "The Passengers Act;" 26 and 27 Vict., cap. 51, "The Passengers Act Amendment Act;" 33 and 34 Vict., cap. 95, "The Passengers Act Amendment Act, 1870;" and 39 and 40 Vict., cap. 80, "The Merchant Shipping Act, 1876."

1. *Definition of Terms.*—"United Kingdom" includes Great Britain and Ireland and the islands of Guernsey, Jersey, Alderney, Sark, Scilly, and Man.

"North America" includes the Bermudas, and all ports and places on the eastern coast of North America, or in the islands adjacent or near thereto, or in the Gulf of Mexico north of the Tropic of Cancer.

"West Indies" signifies the West India Islands, the Bahamas, British Guiana, and Honduras.

"Governor" signifies the person who, for the time being, is lawfully administering the government of any British colony in which he may be acting.

"Statute adult" means any person of twelve years or upwards, or two between one and twelve years.

"Passage" includes all passages except cabin passages, and "passengers" includes all passengers except cabin passengers, and except labourers under indenture to, or conveyed in ships the property of, or chartered by

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[1] 25 and 26 Vict., cap. 63, sec. 35.
[2] Sec. 36.
[3] 17 and 18 Vict., cap. 104, sec. 324.
[4] 25 and 26 Vict., cap. 63, sec. 37.
[5] Sec. 325.

the Hudson Bay Company; and no persons are deemed cabin passengers unless the space allotted to their exclusive use is in the proportion of 36 clear superficial feet to each statute adult, nor unless they mess at the same table with the captain or first officer, nor unless the fare be at certain rates throughout the voyage per week, nor unless they have the formal and duly signed contract ticket.

"Upper passenger deck" means and includes the deck immediately below the upper deck, or the poop or round-house, and deck-house, when the passengers and cabin passengers in the poop, &c., exceed a third of the total number the ship can lawfully carry on the deck next below.

"Ship" signifies any description of sea-going vessel, British or foreign.

"Passenger ship" means every description of ship which carries on any statutory voyage more than fifty passengers, or a greater number than one statute adult to every 33 tons of a sailing ship, or than one statute adult to every 20 tons of a steam-ship.

"Master" means the person (captain) who signed the ship's articles, and who, other than a pilot, is in charge or command.[1]

2. *Prefatory Enactments.*—The Act extends to every passenger ship proceeding on any voyage *from* the United Kingdom to any place out of Europe, and not being within the Mediterranean, and on every colonial voyage as after stated, and to every ship bringing passengers *into* the United Kingdom from any place out of Europe, and not being within the Mediterranean, and to every description of sea-going vessel, whether British, foreign, or colonial, carrying passengers other than cabin passengers in sufficient number to make the vessel a passenger ship as before defined, not carrying a mail. But this Act does not extend to any of Her Majesty's ships of war, nor to any ship in the service of the Commissioners of Admiralty, nor to any ship of war or transport in the service of the East India Company.[2]

The Board of Trade carry the Act into execution,[3] but they are not personally liable, nor are the private estate and effects of any of them liable, for anything done under the Act, in their or his official capacity, or in the public service.[4] Emigration officers and assistants are appointed and removed by, and act under, the Board, with the sanction of the Secretary of State; and, in the Colonies, by and under the Governors;[5] and all powers, functions, and duties of the emigration officer can be performed by his assistant, or, at any port where there is no emigration officer or assistant, or in their absence, by the chief officer of the customs.[6]

The captain of every ship—"passenger ship" or otherwise—fitting or intended as aforesaid, must give the emigration officer (and, in foreign ports or places, Her Majesty's consular officer) every facility for inspecting the ship, and communicating with the passengers, and for ascertaining that the statutory provisions have been complied with; and failing his doing so, he is liable to a penalty not exceeding £50.[7]

3. *Arrangements for the Ship.*—No ship fitted or intended for carrying passengers as a "passenger ship," shall clear out or proceed to sea until

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[1] Sec. 3 of 18 and 19 Vict., cap. 119, and Amended Act, sec. 3.
[2] Sec. 4, and sec. 4.
[3] Sec. 5 of 35 and 36 Vict., cap. 73.
[4] Sec. 7 of 18 and 19 Vict., cap. 119.
[5] Sec. 8.
[6] Sec. 9.
[7] Sec. 10.

the captain thereof obtain from the emigration officer, at the port of clearance, a certificate of clearance, that all the statute requirements, so far as these can, have been complied with, and that, in his opinion, the ship is seaworthy, in safe trim, and in all respects fit for the voyage, and that her passengers and crew are in a fit state to proceed; nor, until the captain grants a bond in terms of section 63 of the Act, and section 17 of the Amended Act.[1] If the emigration officer refuses to give the certificate, the owner may appeal to the Court of Survey for the port or district where the ship for the time being is (39 and 40 Vict., cap. 80, sec. 14).

If any passenger ship clear out or proceed to sea without the captain having first obtained this certificate or granted said bond, that ship is forfeited to Her Majesty, and may be seized by any officer of customs, if found within two years thereafter in any port or place in Her Majesty's dominions, and is to be proceeded against as if a forfeiture under any of the customs laws, but may be released on the conditions stated;[2] and if neither the owners nor charterers of the "passenger ship" reside in the United Kingdom, then the foresaid bond is to be for £5000, instead of £2000, and with a condition, that under the provisions and limitations in the Amended Act, the obligors (the grantors) shall pay, as a Crown debt, all expenses in rescuing, maintaining, and forwarding to their destination, any passengers who, by shipwreck or any other cause, unless their own neglect or fault, may not be conveyed to their destination.[3]

The rules hereinafter mentioned have to be observed with respect to emigrant ships, but it is lawful for the Board of Trade, if satisfied that the food, space, accommodation, or any other particular or thing provided in an emigrant ship for any class of passengers, is superior to the requirements of these rules, to exempt such ship from any of the requirements, in such manner and upon such conditions as the Board of Trade may think fit (39 and 40 Vict., cap. 80, sec. 20).

No ship must carry passengers or cabin passengers on more than two decks; but cabin passengers, not exceeding one for every 100 tons of the registered tonnage, or sick persons in hospital, may be carried under a poop, or in a deck-house, notwithstanding that passengers are carried on two other decks; and, if passengers are carried in a poop, or round-house, or deck-house, that poop, &c., being properly built and secured to the satisfaction of the emigration officer, the captain is liable, for each breach of this enactment, to a penalty not exceeding £500 nor less than £20.[4]

The following rules have to be observed for determining the number of passengers to be carried in a "passenger ship:"—

The first rule as to sailing ships is repealed by section 5 of the Amended Act.

2. No ship must carry under the poop, or in the round-house, or deck-house, or on the "passenger deck," a greater number of passengers than in the proportion of one statute adult to every 15 clear superficial feet of deck granted to their use.

3. No ship must carry on her "lower passenger deck," a greater number of passengers than in the proportion of one statute adult to every 18 clear superficial feet allotted to their use. But if the height between this

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[1] Sec. 11.
[2] 26 and 27 Vict., cap. 51, sec. 13.
[3] Sec. 17.
[4] 18 and 19 Vict., cap. 119, sec. 13.

lower passenger deck and the deck directly above it is less than 7 feet, or if the openings (exclusive of side scuttles), through which air and light are admitted together to the lower passenger deck, be less in size than in the proportion of 3 *square feet* to every 100 superficial feet of the lower passenger deck, no greater number of passengers must be carried on this deck than in the proportion of one statute adult to every 25 clear superficial feet of it.

4. No ship, whatever her tonnage or superficial space of "passenger decks," must carry a greater number of passengers *on the whole*, than in the proportion of one statute adult to every 5 superficial feet, clear for exercise, on the upper deck or poop, or on the round-house or deck-house, if secured and fitted on the top with a railing or guard, to the emigration officer's satisfaction.

5. In the measurement of the passenger decks, poop, round-house, or deck-house, the space for the hospital, and that occupied by passengers' personal luggage permitted to be carried there, are to be included.

And if there be on board, at or after clearance, a greater number of passengers (except by births, *i.e.*, by being born at sea) than in the proportions before mentioned, the captain is liable to a penalty not greater than £20, nor less than £5, for each passenger in excess.[1] But nothing in the Passengers Act, 1855, varies or repeals the Act 16 and 17 Vict., cap. 84 (20th August 1853), as to "*Passages of natives of Asia or Africa, &c.*"[2]

In every "passenger ship," the beams supporting the "passenger decks," must form part of the lasting building of the ship, and be of sufficient strength, and firmly secured to the ship, to the satisfaction of the emigration officer:—these "passenger decks" must be at least 1½ inch in thickness, and be firmly laid and fastened upon the beams, continuously from side to side of the compartment in which passengers are berthed. The height between that part of the deck on which passengers are carried, and the deck immediately above it, must not be less than 6 feet; and, for not complying with these requisites, or any of them, the owner, or charterer, or captain, is liable, for each offence, to a penalty not greater than £50, and not less than £5.[3] In a "passenger ship" there must not be more than two tiers (rows) of berths on any one deck, and the space between the floor of the berths and the deck immediately below them must not be less than 6 inches, nor the space between each tier of berths, and between the upper tier and the deck above it, less than 2 feet 6 inches; these berths must be securely constructed, and not less than 6 feet in length and 18 inches in width, for each statute adult, and in sufficient number for all the passengers in the Passengers' Lists after mentioned; and no part of any berth must be within 9 inches of any water-closet in the between decks. And, for not complying with any of these, the owner, &c., or any of them is liable, for each offence, to a penalty not greater than £50, nor less than £5.[4] All the male passengers of fourteen and upwards, who do not occupy separate berths with their wives, must be berthed in the forepart of the ship, in a separate part divided off from the space set apart to the other passengers by a stout and well-secured bulkhead, without any opening into, or communication with any adjoining berth,—or in separate

[1] Sec. 14. [2] Sec. 15. [3] Sec. 20. [4] Sec. 21.

rooms with enclosed berths,—one passenger only occupying the same berth,—unless husband and wife, or females, or children under twelve; under a penalty not greater than £50 nor less than £5.[1]

A sufficient space, not less than 18 clear superficial feet for every fifty passengers, under the poop, or in the round-house, or in a deck-house properly built and secured, or on the upper passenger deck, and not elsewhere, must be properly divided off, and used exclusively as an hospital, or hospitals, for the passengers, and fitted up with beds, and supplied with proper beds, bedding, and utensils, and so kept fitted and supplied, under a like penalty.[2] Privies and water-closets must be firmly constructed, and maintained in a cleanly and serviceable condition throughout the voyage, under a similar penalty.[3] And no "passenger ship" must clear out or proceed to sea without due provision for affording light and air to the passenger decks, nor, if there are one hundred passengers, without a proper and an adequate ventilating apparatus; and the passengers must have the free use of the whole of each hatchway over the space alloted to their use; and these under a similar penalty.[4]

When the estimated length of the intended voyage exceeds eighty days for sailing ships, and forty-five days for steam-ships, and the number of passengers exceeds fifty,—and whenever the number on board, including cabin passengers, officers, and crew, exceeds 300,—every "passenger ship" must carry, rated on the ship's articles, a medical practitioner, duly qualified and authorised by law to practise in some part of Her Majesty's dominions, or, in the case of a foreign ship, in the country to which she belongs as a physician, surgeon, or apothecary, who must be provided with proper surgical instruments.[5] And the owner or charterer must provide for the use of the passengers a supply of medicines, medical comforts, instruments, and other things proper and necessary for diseases and accidents on sea-voyages, and for the medical treatment of the passengers during the voyage, and an adequate supply of disinfecting fluid or agent, with written or printed directions for the use of all these;—the medicines, &c., being good in quality and sufficient in quantity for the probable occasions of the intended voyage, and properly packed and placed under the charge of the medical practitioner.[6] Before clearing out or proceeding to sea, a medical practitioner, appointed by the emigration officer, has to inspect the medicines, &c., and all the passengers and crew, and to certify to him that the ship contains a sufficient supply of medicines, &c., and has also certified, and the emigration officer is satisfied, that none of the passengers or crew appear, by any bodily or mental disease, unfit to proceed, or likely to endanger the health or safety of the other passengers about to proceed. This medical inspection of the passengers has to take place, either on board, or, at the discretion of the emigration officer, at some convenient place he may appoint on shore before embarkation,—the captain, owner, or charterer paying to the emigration officer a sum at the rate of twenty shillings for every hundred persons so examined. But if, on any particular occasion, that officer cannot obtain the attendance of a medical practitioner,—on receiving from him written permission, the captain can clear out and proceed to sea.[7] And, on being required by the emigration

[1] Sec. 22. [2] Sec. 24. [3] Sec. 25. [4] Sec. 26.
[5] Secs. 41 and 42. [6] Sec. 43. [7] Sec. 44.

officer to reland or not to embark any person who is unfit, by sickness, to proceed, or who is likely, for that or any other reason, to endanger the health or safety of the others on board,—or, if he is satisfied that, for the purification of the ship or otherwise, all or any of the passengers or persons on board, should be relanded, then the captain must reland these passengers or persons, and so much of their effects, and those members of their families, that cannot, in that officer's judgment, be properly separated from them.[1]

As to return of passage money and subsistence money to passengers relanded, see *infra*, PASSENGERS' RIGHTS, secs. 46 and 47.

Every "passenger ship" must carry *throughout the voyage*, and according to her tonnage, the number of boats specified in section 27, one of which must be a long-boat, and one a properly fitted lifeboat, carried in the manner most suitable for immediate service; and each of the ship's boats must be of a suitable size and description, and approved by the emigration officer,—must be seaworthy,—properly supplied with all requisites, —and at all times kept clear for immediate use at sea. Each "passenger ship" going to the south of the Equator must have on board at least two chronometers, and, to the north of the Equator, at least one chronometer; and on board all "passenger ships" must be three steering compasses and one azimuth compass,—four properly fitted life-buoys, kept at all times ready for immediate use,—adequate means, to be approved by the emigration officer, for making signals by night and in fogs,—a fire-engine in proper working order, and of a description and power for extinguishing fire with or without other apparatus,—and not less than three bower anchors of sufficient weight, and cables of sufficient length, size, and material, for the size of the ship.[2]

Every "passenger ship" must be manned with an efficient (adequately strong and active) crew for her intended voyage, to the satisfaction of the clearing emigration officer, and the crew's strength must not be lessened, nor any of the men changed, when once passed, without the written consent of that officer, or of the shipping superintendent at that port, as is required in shipping seamen on board merchant ships; but which last consent, when obtained, must be lodged, within twenty-four hours thereafter, with the emigration officer.[3]

In section 30, the length of a voyage to the different places there mentioned is computed for a "passenger ship," either by sails or by steam; and the Board of Trade, by authority of a Secretary of State, and by notice in the *London Gazette*, may, nevertheless, declare what shall be held the length of voyage from the United Kingdom to any of the places there named, or to any other port or place, and may fix the different lengths of voyage for sailing and for steam vessels;[4] and, in every "passenger ship," the water laden on board must be carried in tanks, or in approved casks, which must be sweet and tight,—of sufficient strength, and if of wood, the staves not made of pine, fir, or soft wood, and properly charred within, and each not capable of containing more than 300 gallons.[5] In addition to the allowance of water for the use of the passengers, an additional supply of pure water must be shipped for cooking purposes, after the rate of 10 gallons to every 100 statute adults

[1] Sec. 45. [2] Sec. 27. [3] Sec. 28. [4] Sec. 30. [5] Sec. 33.

on board, for every day of the estimated length of voyage, and also an ample supply of pure water for the use of the crew and all others on board.[1] But, if the ship is intended to call at an intermediate port or place during the voyage, for the purpose of taking in water and wholesome provisions, and an obligation to that effect is inserted in the bond after mentioned, then, it is sufficient to place on board, at the port of clearance, such a supply of water as may be necessary for the voyage to that intermediate port or place, under the conditions stated in this section.[2]

The emigration officer at the port of clearance must, before any "passenger ship" clear out, survey, or cause some competent person survey, the provisions and water placed on board for the consumption of the passengers, and must satisfy himself that these are of good and wholesome quality, in sweet and good condition,—and in quantities sufficient to serve throughout the voyage for the issues appointed by the Acts. All the water, provisions, and stores must be provided and properly stowed away at the expense of the owner, charterer, or captain;[3] and no part of the cargo or of the passengers' luggage, nor of the provisions, water, or stores, for the use either of the passengers or of the crew, must be carried on the upper deck or on the "passenger decks," unless the emigration officer be of opinion that it can be so placed as not to obstruct light or ventilation, or to interfere with the comfort of the passengers. These, if thus allowed to be carried, must be stowed and secured to that officer's satisfaction, and the space thereby occupied or made unfit for the passengers' use is to be deducted (unless occupied by the passengers' luggage) in reckoning the space by which the number of passengers is regulated.[4] But, if the emigration officer considers any of the provisions, stores, or water not of good and wholesome quality, or not in sweet or good condition, he can reject or mark the same, or the vessels or packages in which they are, and direct them to be emptied or landed; and if these so rejected are not forthwith emptied or landed, or if, after being landed, these or any part are shipped,—the owner, charterer, or captain of that ship, or any of them, or, if reshipped in any other "passenger ship," the person causing the same to be so reshipped,—is liable, for each offence, to a penalty not exceeding £100.[5]

The captain of every ship, whether a "passenger ship" or otherwise, carrying passengers on any statutory voyage, must, before demanding clearance, sign two lists according to Schedule B, correctly setting forth the name and other particulars of the ship and of every passenger on board;—these lists, countersigned by the emigration officer, are delivered to the clearing officer, and one of them, countersigned by the latter, and returned to the captain, is termed "The Master's List,"—which he exhibits to the chief customs officer in Her Majesty's possessions, or to the British consular officer at any foreign port at which the passengers or any of them may be landed, and lodges the same list with the chief officer of customs or the consular officer (as the case may be) at the final port or place of discharge.[6] If, after so signing these lists, any additional passengers are taken on board, the captain must make an addition to the "master's list" of the names and other particulars of every additional

[1] Sec. 31. [2] Sec. 34. [3] Sec. 31. [4] Sec. 29. [5] Sec. 32. [6] Sec. 16.

passenger, and also sign a separate list of these names and particulars, and this last list, countersigned by the emigration officer, with the "master's list," to which these additions have been made, must be delivered to the chief customs officer who countersigns the "master's list" and returns it, and if there is no customs officer at the port or place, the additional lists must be delivered to the officer at the next port touched or arrived at, where such an officer is; and a fresh certificate must be obtained from the emigration officer for each additional passenger.[1] In addition to the names and particulars required by these two sections in the passengers' lists, the names of all cabin passengers on board must be set forth, specifying whether they are severally under or above twelve years of age, and at what place the passengers and cabin passengers respectively are to be landed, and Schedule B will require to be altered accordingly.[2] And any person found on board any "passenger ship," with the design of obtaining a passage therein, without consent of the owner, charterer, or captain, that person, and every person aiding or abetting him, are each liable to a penalty not exceeding £5, or, in default of payment, to imprisonment, with or without hard labour, not exceeding three calendar months; and the person so found can be taken without a warrant before a justice and convicted.[3] And by section 7 of the Amended Act, this penalty is extended from £5 to £20.

No "passenger ship" must clear out or proceed to sea if there be on board *as cargo*, horses, cattle, gunpowder, vitriol, lucifer-matches, guano, or green hides, or any other article, or number of articles, whether as cargo or ballast, which, by their nature, quantity, or manner of stowage, the emigration officer at the port of clearance considers likely to endanger the safety of the ship, or the health or lives of the passengers; and no part of the cargo, or of the passengers' luggage, or of the provisions, water, or stores for the use of the passengers or of the crew, must be carried on the upper deck or on the "passenger decks,"—unless the emigration officer be of opinion these can be placed there, so as not to hinder or obstruct the light or ventilation, or to interfere with the comfort of the passengers, and are stowed and secured to the satisfaction of the emigration officer. The space thus occupied or made unsuitable for passengers must be deducted (unless occupied by passengers' luggage) in calculating the space by which the number of passengers is regulated.[4]

But, notwithstanding the foregoing prohibitions, *horses and cattle* may be carried *as cargo* in "passenger ships," under the following conditions:—

1. That these be not carried on any deck *below* the deck on which passengers are berthed, nor in any compartment (division or separate place) in which passengers are berthed, nor in any adjoining compartment, unless in an iron-built ship, the compartments of which are divided off by water-tight bulkheads extending to the upper deck.

2. That clear space be left on the spar or weather deck for the use and exercise of the passengers, of at least 10 superficial feet for each statute adult.

3. That no greater number of passengers be carried than 15 to 100 tons of the ship's registered tonnage.

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[1] Sec. 17.
[2] 26 and 27 Vict., cap. 51, sec. 6.
[3] 18 and 19 Vict., cap. 99, sec. 18.
[4] Sec. 29.

4. That, in "passenger ships" of less than 500 tons registered tonnage, not more than two head of *large cattle* be carried, and in "passenger ships" of more tonnage, not more than one additional head of large cattle for every additional 200 tons of the ship's registered tonnage, not having more, in all, in any "passenger ship," than ten head of large cattle. Here, this term "large cattle," comprises the male and female of horned cattle, deer, horses, and asses; and four male or female sheep, or four female goats, are to be held equal to, and may be carried in place of, one head of large cattle, under the same conditions.

5. That proper arrangements for the housing, maintenance, and cleanliness of the animals, and for stowing their fodder, be made to the satisfaction of the emigration officer.

6. Not more than six dogs, and no pigs or male goats, can be conveyed as cargo in any "passenger ship:"—and, for any breach of the foregoing prohibition, or of any of the foresaid conditions, the owner, charterer, and captain, or any of them, incur for each offence a penalty not exceeding £300 nor less than £5.[1]

And by the Passengers Act Amendment Act, 1870, 33 and 34 Vict., cap. 95, sec. 3, any one of Her Majesty's Principal Secretaries of State may, by order under his hand, authorise the carriage, as cargo, in any passenger ship, of naval and military stores for the public service.

By the Merchant Shipping Act, 1873, 36 and 37 Vict., cap. 85, restrictions are placed on the shipment of dangerous goods *in any ship*. By section 23 of that Act, a person who sends by any vessel (British or foreign), aquafortis, vitriol, naphtha, benzine, gunpowder, lucifer-matches, nitro-glycerine, petroleum, or any other dangerous goods, without distinctly marking their nature on the outside of the package, and giving *written* notice of the nature of the goods, and of the name and address of the sender, to the master or owner, at or before the time of sending the same to be shipped, incurs a penalty not exceeding £100, which is reduced to a sum not exceeding £10, if the sender prove that he was merely an agent, and had no reason to suspect the nature of the goods. By knowingly *mis*-describing such goods, a person incurs a penalty not exceeding £500 (sec. 24). And when the master suspects that packages contain such goods, he may refuse to receive them, and may require them to be opened (sec. 25). And when any such goods have been shipped without description and notice as aforesaid, the master may cause them to be thrown overboard; and neither he nor his owner incurs any liability by so doing (sec. 26). Or any court, having Admiralty jurisdiction, may cause such goods (not having been described, &c., as aforesaid, or having been misdescribed) to be forfeited (sec. 27).

During the voyage, supplies of pure water and of sweet and wholesome provisions, of good quality, have to be issued by the captain, daily and weekly, to each passenger, or to the headman of each mess (when the passengers are divided into messes), according to the scales prescribed by section 35 of the Passengers Act, and the addition made by section 10 of the Amended Act. But the issue of lime-juice weekly to each statute adult is to be confined to the period when the ship is within the tropics,—the issue of lime-juice being, during the other portions of the voyage, at

[1] 26 and 27 Vict., cap. 51, sec. 8.

the discretion of the medical practitioner on board, or, if there is not one, of the captain of the ship.[1] And, for at least forty-eight hours after his arrival at the end of his voyage, every passenger in a "passenger ship" is entitled to sleep in the ship, and to be provided and maintained on board, in the same manner as during the voyage, unless, within that time, the ship leaves that port or place in further continuation of her voyage.[2] Section 36 provides for proper cooking of the food, and sections 38, 39, and 40 point out in what cases passenger ships are to carry passenger stewards, passenger cooks, and interpreters.

Then, as to the accommodation of the passengers, it has been already seen (p. 171), that no "passenger ship" can clear out or proceed to sea until the captain has obtained the requisite certificate of clearance from the emigration officer at the port of clearance; and, by section 19, it is enacted, that no "passenger ship" can clear out or proceed to sea until she has been surveyed, under the direction of the emigration officer at the port of clearance, but at the expense of the owner or charterer, by two or more of the surveyors of the Board of Trade at each port where an emigration officer is, and for other ports, by the Commissioners of Customs, and has been reported seaworthy, and fit for her intended voyage. This survey is to be made before any part of the cargo is taken on board, unless what may be necessary for ballasting the ship, which, if laden, must be so shifted, if required, as to expose every part of the ship's frame.[3] This survey will not be necessary in the case of a steamer in respect of which a passenger certificate under the Merchant Shipping Act has been granted (39 and 40 Vict., cap. 80, sec. 18).

The preceding enactments of the two Acts are fortified by penalties in the case of non-compliance by the owner, or charterer, or captain.

4. *Passengers' Rights.*—Any passenger relanded on account of his sickness or that of any one of his family, and who is not embarked or does not sail in the ship, or any emigration officer on his account, can summarily recover the whole money paid, by or on account of that passenger and of members of his family so relanded, from the person to whom it was so paid, or from the owner, charterer, or captain, in the option of the passenger or emigration officer.[4] And this section applies to cabin passengers, as well as to other psssengers, relanded on account of sickness; and the passage money of all cabin or other passengers thus relanded can be summarily recovered under section 84 of the Passengers Act, upon delivering up their contract tickets, though the ship may not have sailed. But, of the passage money of *cabin* passengers so relanded, one-half only is recoverable.[5] And to each passenger so relanded for any of the reasons in section 45 (*ut sup.* p. 174), the captain must pay subsistence money, at the rate of 1s. 6d. a day for each statute adult, until he is re-embarked, or declines or neglects to proceed, or until his passage money, if recoverable under section 46, be returned to him. But if the passenger be lodged and maintained in any hulk or establishment of the Board of Trade, then, the subsistence money is paid to the emigration officer at the port.[6]

If any person, by whom, or on whose account, a contract is made for a

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1 26 and 27 Vict., cap. 51, sec. 9.
2 18 and 19 Vict., cap. 119, sec. 57.
3 Sec. 19.
4 Sec. 46.
5 26 and 27 Vict., cap. 51, sec. 11.
6 18 and 19 Vict., cap. 119, sec. 47.

passage in any ship to which the Act extends, and is at the place of embarkation at the appointed time, and, if required, pays the stipulated passage money, or any unpaid balance, and is not received on board before 6 P.M. of the appointed day of embarkation, from any cause whatever other than his own refusal, neglect, or fault, or the prohibition of an emigration officer (sec. 45), or commands of an Order in Council,—or if, from any of these causes, a passenger, who has been received on board, does not obtain a passage in that ship to the contracted-for port of landing,—or, with all the immediate members of his family included in his contract, a passage to the same port in an equally fit ship, to sail within ten days from the contract day of embarkation, and, in the meantime, be paid subsistence money,—then such passenger, or an emigration officer on his account, can recover from any party to whom the money was paid,—or, if the contract was made on behalf of the owner, charterer, or master, from such person, all money paid, with such reasonable compensation, not exceeding £10, as the justices may award.[1] When the ship does not actually put to sea on the day fixed, subsistence money is due for the delay, at the rate of 1s. 6d. a day for each statute adult for each of the first ten days, and then 3s. a day for each statute adult till final departure, recoverable in manner foresaid; but, if the ship be weather-bound, and if the passengers be maintained on board, nothing is payable.[2] If a "passenger ship," after clearance, be detained in port more than seven days, or put into or touch at any port or place in the United Kingdom, all the stores, provisions, medical comforts, and requisites must be made up to the full quantities for the voyage, under a penalty for failure of not more than £100, or less than £50; and, within twelve hours after so putting into or returning, the captain must report himself and the condition of the ship and requisites to the emigration officer, or customs officer at the port, and produce his "master's list," under a penalty not exceeding £20, nor less than £2.[3]

If, while in any port of the United Kingdom, or after the commencement of the voyage, any "passenger ship" be wrecked, or otherwise rendered unfit to proceed on her intended voyage, and if the passengers, or any of them, be brought back to the United Kingdom,—or if any "passenger ship" put into any port or place in the United Kingdom in a damaged state, the captain, charterer, or owner must, within forty-eight hours, give to the emigration officer, or, in his absence, to the chief customs officer, a written engagement to the following effect:—If the ship has been wrecked, or rendered unfit to proceed on her voyage,—that the owner, charterer, or captain shall embark and convey the passengers in some other capable ship, to sail within six weeks, to the port or place for which their passages had been previously taken; and if the ship has put into port in a damaged state, then, that she shall be made seaworthy, and in all respects fit for her intended voyage, and, within six weeks from the date of the written engagement, shall again sail with her passengers. In either of these events, the owner, charterer, or captain, must either lodge and maintain the passengers on board, the same as if they were at sea,—or pay them subsistence money, at the rate of 1s. 6d. a day, for each statute adult, until they again proceed, unless the passengers be maintained

[1] Sec. 48. [2] Sec. 49. [3] Sec. 50.

in a hulk or establishment under the superintendence of the Board of Trade, when the subsistence money has to be paid to the emigration officer at that port or place. And, if the other capable ship, or the damaged ship, shall not sail within the foresaid time, or if a failure be made in any of the aforesaid particulars,—the passengers, each for himself, or any emigration officer on their account, can summarily recover all sums paid by or on account of these passengers, or any of them, for the passage, from the party to whom, or on whose account, the same has been paid, or from the owner, charterer, or captain, or any of them, at the choice of the passenger or emigration officer.[1] But, if the emigration officer think it necessary, he can direct the passengers to be removed, at the captain's expense, from the damaged "passenger ship," and if, after this direction, any passenger refuse to leave that ship, he is liable to a penalty not exceeding forty shillings, or to imprisonment not exceeding one calendar month.[1]

If the passengers or cabin passengers of any "passenger ship" be taken off from that ship, or be picked up at sea, from any boat, raft, or otherwise, and if the port or place to which they may be conveyed be in the United Kingdom,—one of the principal Secretaries of State,—if, in any colonial possession, the Governor of the colony, or any one authorised by him for the purpose,—or, if in any foreign country, Her Majesty's consular officer at the port or place therein,—may pay all or any part of the expenses thereby incurred.[2] And if, without any fault or neglect of his own, any passenger or cabin passenger of any "passenger ship" find himself in any colonial or foreign port or place, other than that for which the ship was originally bound, or at which he, or the Emigration Commissioners, or any public officer, or other person on his account,—the Governor of that colony, or any person authorised by him for the purpose, or Her Majesty's consular officer at that foreign port or place, may forward that passenger to his destination, unless within forty-eight hours of these passengers having arrived, the captain of the ship give a written undertaking to the Governor or the consular officer (as the case may be), to forward or carry on that passenger or cabin passenger, within six weeks thereafter, to his original destination, and unless, within that period, the captain do accordingly forward him or carry him on.[3]

All expenses incurred under these two sections 52 and 15, by or by authority of a Secretary of State, Governor, consular officer, or other person,—including the expense of maintaining the passengers till forwarded, and all necessary bedding, provisions, and stores, become a debt due to Her Majesty from the owner, charterer, and captain of the ship, and is recoverable from them, or one or more of them, at the instance of Her Majesty, in the same manner as other Crown debts; and the certificate of the Secretary, Governor, or consular officer, stating the total amount, is sufficient evidence of the amount; but the party can plead that the certificate is false or fraudulent, or that the expenses were not duly incurred, but under the restriction and provision in this section.[4] No passenger is to be landed at any port or place different from that contracted for, and if otherwise, the captain is liable to a penalty not exceed-

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[1] 26 and 27 Vict., cap. 58, sec. 14.
[2] 18 and 19 Vict., cap. 119, sec. 52.
[3] 26 and 27 Vict., cap. 51, sec. 15.
[4] Sec. 16.

ing £50, nor less than £10.[1] On arrival, every passenger is entitled to remain forty-eight hours at least to sleep, and to be provided for and maintained, as usual, in the ship, unless the ship, within that time, quit that port or place in further prosecution of her voyage.[2] None of these provisions are to affect the right of any party to proceed for breach or non-performance of his contract.[3]

5. *Miscellaneous.*—The Queen in Council can prescribe rules and regulations for the four purposes specially mentioned, of which a copy in the *London Gazette*, or printed by the Queen's printer, is good and sufficient evidence.[4] The medical practitioner, aided by the captain, or, in the absence of the former, the captain of the ship, can exact obedience to all these rules and regulations; and, for neglecting or refusing compliance, or for any obstruction, or riotous or insubordinate conduct, a penalty is incurred not exceeding £2, and, in addition, imprisonment not exceeding a month at discretion.[5] The Board of Trade prepares abstracts of the Act and Orders in Council, of which four copies and a copy of the Act, are demandable from, and are supplied on demand, by the principal customs officer at the port of clearance, to the captain of every "passenger ship" proceeding from the United Kingdom to any port or place in Her Majesty's possessions abroad; and, on request of any passenger on board, the captain must produce a copy of the Act to him for his perusal, and, previous to embarkation, he must post, and keep posted, so long as any passengers remain in the ship,—copies of the abstract on at least two conspicuous places between the passengers' decks, under a penalty for neglect, not exceeding forty shillings for each day, and during any part of which these fail, by his act or default, to be so posted, under the like penalty for any person displacing or defacing the same.[6] Any person, directly or indirectly selling or causing to be sold, spirits or strong waters to a passenger in a "passenger ship," is liable to a penalty not exceeding £20, nor less than £5.[7] Before a "passenger ship" can clear out, or proceed to sea, the captain, with the owner, or charterer, or in their absence, or if he be owner or charterer, one other sufficiently good party approved of by the chief officer of customs, must grant a joint bond, in duplicate and without stamp, in the form of Schedule C, for £1000, in the special terms there given.[8] If neither owners nor charterers of a "passenger ship" reside in the United Kingdom, this bond is for £4000, and an additional condition is inserted, that, under the foresaid provisions and limitations, the granters shall pay all expenses that may be incurred, under the Passengers Acts, in rescuing, maintaining, and forwarding to their destination, any passengers of a "passenger ship," who, by shipwreck or any cause other than their own fault or neglect, may not have been conveyed to their intended destination by the owner, charterer, or captain of that ship.[9] And, on one of the duplicates of the bond to be granted under these sections, the chief customs officer at the port of clearance certifies that the bond has been duly executed by the captain and the other parties, and he forwards the same to the Colonial Secretary of the colony in Her Majesty's possessions abroad, to which the "passenger ship" is bound; and this certificate is to be held as conclusive evidence of the due execution of the bond as aforesaid.[10]

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[1] 18 and 19 Vict., cap. 119, sec. 56. [2] Sec. 57. [3] Sec. 58. [4] Sec. 59.
[5] Sec. 60. [6] Sec. 61. [7] Sec. 62. [8] Sec. 63.
[9] 26 and 27 Vict., cap. 51, sec. 17. [10] 18 and 19 Vict., cap. 119, sec. 64.

If there is no agreement to the contrary, the owner is finally responsible, as between him and the other parties made liable, for any failure in complying with any of the requirements of the Passengers Act; and if any of these last parties pay any sums made payable to or on account of any passenger as aforesaid, he is entitled, in absence of any such agreement, to recover the same with costs from the owner.[1]

Passage brokers are licensed under sections 66, 67, and 68, and "emigrant runners" under sections 76, 77, and 78; and the duties, powers, and obligations of these are prescribed in the adjoining sections, which need not be here detailed.

II. Colonial Passenger Voyages.—In the Passengers Act, the term "colonial voyage" means any voyage from any place within any of Her Majesty's possessions abroad (unless the territories under the government of the East India Company and the island of Hong-Kong in China), *to any place whatever*, where the distance between these places is more than 400 miles, or the continuance of the voyage, declared according to section 97, shall exceed three days.[2] And, so far as the Passengers Act is applicable, it applies to all ships carrying passengers on these "colonial voyages," unless the parts relating to the following matters:—

1. To passage brokers and their licences (secs. 66–69).
2. To passengers' contract tickets (secs. 71, 72, 74).
3. To emigrant runners (secs. 75–81).
4. To giving bond to Her Majesty (sec. 63).
5. To keeping on board a copy of the Act (sec. 61).
6. To Orders in Council regulating emigration from the United Kingdom, or prescribing rules for promoting health, &c. (sec. 59).

But if the declared continuance of any "colonial voyage" be less than three weeks, then, in addition to these exceptions, the stipulations of the Passengers Act, so far as relating to the following matters, do not extend or apply:—The construction or thickness of the deck (sec. 20);—the berths and berthing (secs. 21, 22, 23);—the height between decks (sec. 21);—privies (sec. 25);—hospitals (sec. 24);—light and ventilation (sec. 26); manning (sec. 28); passengers' stewards (sec. 38); passengers' cooks and cooking apparatus (sec. 39);—the surgeon and medicine-chest (secs. 41–44);—the maintenance of passengers for forty-eight hours after arrival (sec. 57);—but when the declared continuance of "colonial voyages" is less than three weeks, the giving out of provisions, as the Act requires, does not apply (unless as to the supply of water, sec. 35) to any passenger who has contracted to furnish his own provisions.[3]

The Governor of each of Her Majesty's possessions abroad can declare by proclamation made by him, from time to time, for that purpose, what in the intention of the Act shall be held to be the length of the voyage of *any ship carrying passengers* from that possession to any place whatever, and to direct, as he thinks proper, a scale of diet for the use of the passengers during such voyage, and also what medicines, medical comforts, medical instruments, and other matters shall be held necessary for the medical treatment of the passengers during a "colonial voyage," and the provisions and requirements of such a proclamation are to be put in execution in all Her Majesty's dominions, as if they had formed part of

[1] Sec. 65. [2] Sec. 95. [3] Sec. 96.

the Act, and as the provisions of the Act may be put in execution.[1] And these respective Governors can authorise such person or persons, as they think fit, to make a survey and examination of "passenger ships" sailing from any of these possessions, similar to that which section 19 requires in regard to "passenger ships" sailing from the United Kingdom, and also, as they think proper, any competent person to act as medical practitioner on board any "passenger ship" proceeding on a "colonial voyage."[2]

Though the "Passengers Act, 1855," does not apply to any of the territories or places under the government of the East India Company, yet the Governor-General in Council, from time to time, can declare, by any Act or Acts for the purpose, that the Act, or any part thereof, shall apply to India, and can make rules as to food, provisions, medical practitioners, &c.[3]

III. Voyages to the United Kingdom.—Within twenty-four hours after the arrival of a ship bringing passengers *into* the United Kingdom from any place out of Europe and not within the Mediterranean, the captain must deliver to the emigration officer or his assistant, or, in their absence, to the chief customs officer at the port of arrival, a correct list, signed by himself, of all the passengers on board his ship, detailing their names, ages, and trades, and the port or ports of embarkation; and if he fail to deliver this list, or if it be wilfully false, the captain is liable, on conviction, to a penalty not exceeding £50. On receiving this list, the emigration or customs officer transmits to the Registrar-General of Births, Deaths, &c., the particulars of any who may have been born on the voyage, and of any passenger who may have died.[4]

Should any ship bringing passengers into the United Kingdom from any place out of Europe have on board a greater number of passengers or persons than in the proportions pointed out by section 14 of the Passengers Act, as amended by section 5 of the Amendment Act, he is liable to a penalty not exceeding £10, nor less than £5, for each person or statute adult over and above.[5] And during the voyage, and any time of detention, the captain must supply to each statute adult pure water and good and wholesome provisions, in terms of section 35 and sections 9 and 10.[6]

II.—CONVEYANCE OF GOODS.

The owners and captains of merchant ships are held to be common carriers by sea, and are under the same liabilities and responsibilities, and as having the same privileges;—but, in the conveyance of goods in ships, the contracts are generally in writing. Ships are freighted either under a regular charter-party or under bills of lading. The charter-party, and sometimes the memorandum for the charter-party only, are used when the ship is freighted by one merchant or more, collectively, on a foreign voyage; but only bills of lading are used when the vessel is a general ship, or is employed in the coasting, coal, lime, or grain trade. Bills of lading are also granted by the captain of a ship when there is a charter-party,—as being the captain's receipt for the goods actually put on board, and as fixing on him the quantity and condition of the goods so shipped, and as containing his obligation to deliver these goods in the like good

[1] Sec. 97. [2] Sec. 98. [3] Sec. 99.
[4] Sec. 100. [5] Sec. 101. [6] Sec. 102.

condition, under the exceptions mentioned in it; and these bills of lading are important negotiable instruments in commerce.

Here it is proposed to consider, in the first place, the CONTRACTS FOR THE CONVEYANCE OF GOODS, as evidenced by—1. The Charter-Party; or, 2. Bills of Lading.

1.—*Charter-Parties.*

This contract,—whether in the form of a charter-party or of a memorandum for a charter-party,—is in writing, or is partly written and partly printed; but although this be the usual form, such does not seem essential, as the terms may be proved by letter or correspondence, in which the particulars of the contract are stated and agreed to by the parties. But, in whatever form the contract may be, it must bear a stamp, in terms of the Stamp Act: and in an *action against the charterer, a copy* of the charter-party, signed on his account, and by the shipowner, is admissible, though unstamped, if there is any evidence that the original was stamped, and a memorandum on the copy, that "the brokers hold the original, stamped," is sufficient;[1] but it lies on the party objecting to secondary evidence of the contents of a lost charter-party, on the ground of the want of a stamp, to show that it was not stamped; and if, at one time, it was unstamped, that fact, of itself, raises the presumption that it continues unstamped; but if the evidence leaves it quite uncertain whether the charter-party was stamped or not, this presumption of its being unstamped is done away, and secondary evidence of its terms is admissible.[2]

In the vessel's *home port*, the charter-party is generally executed by the owners themselves, or by some of them, or by the ship's husband, and by the freighter himself, or by his broker or agent; and, in a *foreign port*, or in a port not of the owner's residence, it is executed by the captain only, and by the freighter or shipper, or his factor or agent.[3] It is seldom that this contract is executed according to the municipal laws of particular states; but, in all maritime countries, it should receive a liberal interpretation, agreeably to what appears to have been the real intention of the parties, and conformable to the general usage of trade, and of the particular trade to which it relates, as well as according to the general law merchant.

But if the charter-party has been entered into by an agent for the merchant or freighter, questions have arisen, and may arise, as to his authority to do so, and whether he is bound personally, or contracted merely as agent.

As to the agent's authority to enter into the charter-party, the following cases are instructive:—In one case, the charter-party was entered into at Limerick, by M. G., by procuration of T. G., who was his brother, and who, it was proved, though resident in London, carried on the business of a corn-factor at Limerick, where his brother, M. G., had the general management of his business and warehouses there, and was in the practice of sending large quantities of corn to London, by vessels hired under charter-parties signed by him, by procuration of T. G.: and it was held, that M. G. had a general authority so as to bind T. G., though, in point of fact, no authority had been given to execute this particular charter-

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[1] Smith *v.* Maguire, 1 F. and F. 199. [2] Closmadeuc *v.* Carrel, 2 Jur. *n. s.* 474.
[3] Shee's Abbot, 169.

party.[1] So, where a charter-party was entered into between shipowners in Liverpool and a party in London, "on behalf of the Geelong and Melbourne Railway Company," but was signed by the latter in his own name merely, without any reference to that company,—it was held, that for a breach of this charter-party he could sue in his own name.[2] And by a charter-party it was agreed between a shipowner and R. and F. of London, merchants, "that the ship should proceed to a certain port, and there load from the factors of the said merchants a cargo,—to be brought to and taken from alongside at merchants' risk and expense, which the said merchants hereby bind themselves to ship;" and thirty running days were to be allowed the said merchants for loading and discharging, and ten days for demurrage, at £4 per day. This charter-party was signed "by authority of, as agents for Mr. A. H. Schwedersky of Memel, R. & F.:" and to an action for demurrage, and damages for detention beyond the demurrage days, they pled, that the charter-party was entered into by them, by authority of, and for and on behalf of, and as agents for, Schwedersky, and not otherwise, and he was named to, and known by, the shipowner, as being their principal, at the time the charter-party was made;—but it was held that the terms of the charter-party showed they had contracted personally.[3]

Again, as to whether, by the charter-party, the agent has bound himself personally, or has contracted merely as agent, the case now cited is a good example of agents having bound themselves personally. And when a memorandum of charter-party bore to be made between "P. of the good ship C., and W., agent for E. W. & Son," to whom the ship was addressed, W. signed his name to this, without any restriction or qualification:—it was held that W. was personally liable as charterer.[4] But when parties made a charter-party as follows:—"It is this day mutually agreed between George Deslandes & Son, owners of the ship 'The Deslandes,' now lying in the Port of London, of the one part, and Messrs. Gregory Brothers, as agents to Samuel Fergusson, of Anamaboo, merchants and charterers, of the other part;" and this charter-party was signed "for Samuel Fergusson, Esq., of Anamaboo, by Gregory Brothers, as agents:"—it was held, that Gregory Brothers were not personally liable.[5]

The foregoing cases show, very plainly, the distinction between a charter-party or memorandum of charter-party, in which one of the contracting parties is designed "*agent*" for some other person, but the terms of it recognise him *only* as the party contracting, and he signs it with his own name, without any qualification, and a charter-party or memorandum made with one "*as agent*" of or for a principal, and the terms of which are in the name, either of the principal, or of himself, "as agent foresaid," and he subscribes his own name, "as agent of or for A. B.," naming his principal. By this latter mode, all doubt and ambiguity would be removed; or it may be specially provided that, after a certain specified act is performed and finished, all obligations and liability of the agent cease, and are at an end, as in the three following cases:—

A memorandum of charter-party was made between shipowners and a

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[1] Smith *v.* Maguire, 3 H. and N. 554.
[2] Cooke *v.* Wilson, 2 Jur. *n. s.* 1094.
[3] Lennard *v.* Robinson, 5 El. and Bl. 125.
[4] Parker *v.* Winlo, 7 El. and Bl. 942.
[5] Deslandes *v.* Gregory, 6 Jur. *n. s.* 651.

party, "as agent for the freighter" (no name being given), and, after stipulating the allowance for demurrage, over and above the lay-days, at £7 per day, there was a proviso that "it is further agreed that this charter-party," being concluded by "the party agent for another party, the liability of the former, in every respect, as to all matters and things, as well before as after the shipping of the cargo, shall cease as soon as they have shipped the cargo:—"it was held, that the party agent was not liable for demurrage at the port of discharge.[1] So, also, when, by a charter-party between the owners of a ship and the agents for charterers, resident in Spain, it was agreed that the ship should proceed to a port named, and there load in regular turn, from the agents of the charterers, a full and complete cargo; and it was also agreed that all liability of the agents, in every respect, and as to all matters and things, as well before, and during, as after the shipping of the cargo, shall cease as soon as they have shipped the cargo;" and a cargo was loaded, but not in regular turn:—in an action for not so loading in regular turn, it was held, that the clause protected the agents from liability, they having loaded and shipped the cargo before the action was brought.[2] And to an action for not loading in terms of the charter-party, it was stated in defence that the defendants entered into the charter-party solely as agents for D., and that, before they signed, it was agreed that they signed only as agents, so as to bind D., and not to render themselves liable as principals, and they had accordingly signed "for D., T. & W., agents," both parties really believing that the agents, having signed as agents, would not be personally liable, and that they had power to bind D., and that he was accordingly bound by the charter-party:—it was held, that this was a good defence.[3] But when the charter-party designed one of the parties as "agent for the merchant," who was then unknown to the shipowner, and this party re-chartered to a third party (who did not know of the first charter-party), as "agent for the owner;" but, before loading or signing the bills of lading, the owner was told of and adopted the second charter-party, and the bills of lading were to name of the third party, as charterer and shipper, though, in fact, the cargo was shipped by the first party, and the owner took a bill for part of the freight from the third party, which was dishonoured;—it was held, that, in substance, the question was, "whether the shipowner had loaded and acted on the first charter-party, and, if so, the first party would be liable for the freight, and, if not, for want of authority.[4]

By the charter-party, or memorandum of charter-party, the ship is let, either in whole or in part, for a voyage or voyages, or for a certain period of time; and the freight is expressed, either as a gross sum for the whole voyage or voyages, or for the entire ship, or part of the ship, or as a particular sum by the month, or other determinate period of time,—or as a certain sum for every ton, cask, barrel-bulk, or bale of goods, put on board; and, in the last case, the charterer is usually bound to furnish a full and complete cargo, or to put on board not less than a specified number of tons, casks, barrel-bulks, or bales of goods, and, if tons, to pay the freight for less than a ton. The charterer so freighting a ship may

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1 Oglesby *v.* Yglesias, El. Bl. and El. 930.
2 Milvain *v.* Perez, 7 Jur. *n. s.* 336.
3 Wake *v.* Harrop, 7 Jur. *n. s.* 710.
4 Holten *v.* Jones, 2 F. and F. 452.

load it either with his own goods or with the goods of others,—or he may wholly underlet it to another.[1]

In stating the burden of the vessel, care should be taken to do so according to the number of tons burden in the certificate of registry, though the burden thus stated will not be held to be conclusive on the parties. Thus, where a ship was stated, in the charter-party, as of the burden of 261 tons *or thereabout*, and the freighter covenanted to load, at a foreign port, a full and complete cargo, which the owner agreed to receive; the vessel was capable of carrying 400 tons of the description of goods mentioned in the charter-party; but the representation as to the number of tons did not appear to have been fraudulently made:—it was held, that the loading of goods, equal to the number of tons stated, was not a performance of this covenant, but that the freighter was bound to put on board as much goods as the ship was capable of carrying with safety.[2] So when the ship was stated in the charter-party as "of the measurement of 180 to 200 tons, or thereabouts," and the charterer undertook to load a complete cargo; but, when the vessel arrived, she was found to be of 257 tons, and the charterer refused to load:—in an action against the charterer for not loading, it was held, that the statement of the ship's tonnage in the charter-party was matter of description only, and did not amount to a warranty, and the charterer was not freed from his obligation to load because the vessel happened to be of 257 tons burden.[3] And if, in the charter-party, the vessel is characterised as of the "A-1" class, this is only a warranty that, at the date of the charter-party, she was classified in that class, not that she should continue to be so, and though she be run out of that letter before arriving at the port of loading, this is no excuse for not loading.[4] The charterer is entitled, however, to stow as many goods as the ship can reasonably carry in her hold, and other parts usually appropriated to cargo; but, if a larger quantity is shipped, so as to occupy the cabin, the shipowner is entitled to charge freight for the excess, at the current freight of the day at the time of loading.[5]

In charter-parties, cases should seldom occur in which there can be any doubt as to whether the owners of the ship have given up the unqualified possession of the vessel, and all control over her, to the charterer, and the charterer or freighter is to be considered as the owner during the continuance of the charter-party;—or, whether the registered owner is still owner as such. This belongs, more properly, to the question of the right of lien for the freight; but here it may be necessary to observe, that the principal distinction is:—whether or not the whole vessel is expressly let and *hired* to freight, for a certain period of time, or for a certain voyage, without regard to the cargo to be put on board, and is to be under the exclusive management and control of the freighters,—and the master and mariners, though appointed by the owners, are to be subject to the orders of the freighter:—this is a proper letting of the vessel to hire, and the freighter is held to be the owner for the time.[6] But where this intention of the parties cannot be clearly collected from the terms of the charter-party, and the nature of the service on which the ship is to be engaged,

[1] Shee's Abbot, 172.
[2] Hunter *v.* Fry, 2 B. and A. 421.
[3] Barker *v.* Windle, 6 El. and Bl. 675.
[4] Hurst *v.* Osborne, 25 L. J. 209.
[5] Mitcheson *v.* Nicoll, 7 W. H. and G. 929.
[6] Hutton *v.* Bragg, 7 Taunt. 14; Newberry *v.* Calvin, 7 Bing. 190.

the courts incline so to interpret charter-parties as to preserve to the owner the legal possession of the vessel, and his lien over the cargo for the freight.

Thus, where it was covenanted by charter-party that the owner should receive on board all such goods as the freighter thought fit to load, and proceed therewith to Madras, and there, after delivering her outward cargo, receive from the freighter's agents a homeward cargo, and deliver the same in London, and that all the cabins but one (which was reserved for the use of the master) should be at the disposal of the freighter, who was to appoint a supercargo to superintend the stowage of the goods; the captain and crew were employed and paid by the owner; and the freight was to be paid at so much per ton of the register tonnage of the ship:—it was held, that there being no express words of letting the ship itself in the charter-party, the freighter did not become the owner for the voyage, but that the possession continued in the shipowner.[1] From this case, and numerous other cases, it may very safely be drawn, as a general rule:—that, where the delivery of the cargo and the payment of the freight are to be concomitant acts, the performance of the one cannot be required without being prepared, at the same time, to perform the other.

In charter-parties, the ship is usually styled "the good ship or vessel called the of , now at ," and the owner is bound to furnish the vessel tight, stanch, and strong, and every way fitted and furnished for the intended voyage; to have her ready by the appointed day to receive her cargo; to wait a certain number of days for taking it on board, called the lay-days, which begin to run on the ship's coming to the usual, or agreed on, place of loading in the port of loading; and, after being so laden, to sail with the first fair wind and opportunity for the port of destination; and this implies, of course, that she must be furnished with all the documents necessary for that voyage. Not only must the vessel, at the outset, be properly sound and seaworthy in her hull, and also fully furnished and equipped in her rigging, furniture, provisions, and crew, but she must continue to be so during the whole voyage, to the best of the owner's endeavours,[2] unless in the case of unavoidable accidents; and if the vessel is thus seaworthy at the time of sailing, though she become otherwise shortly thereafter, this obligation on the owner is complied with: but when the inability of a ship to perform her voyage appears in a short time after sailing, the presumption is, that this inability arose from causes existing prior to the sailing on the voyage, and that she was not then seaworthy;[3] and, therefore, when it had been agreed by charter-party, that the ship, then at Sunderland, and represented as being tight, stanch, and strong, and every way fitted for the voyage, should load a cargo at Sunderland, and proceed therewith to Constantinople for orders,—and the ship having been loaded and duly cleared, came out of the harbour to the roads, three miles from Sunderland, but her shrouds and cables were not then in a proper condition for sailing,—the bills of lading were not signed,—the mate was not on board,—and the captain soon after left her, though there was no intention she should afterwards return to the harbour; and, while none of her foresaid deficiencies had been supplied, she was lost

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[1] Saville *v.* Campion, 2 B. and A. 503. [2] Abbot, 173.
[3] Fawcus *v.* Sarsfield, 6 El. and Bl. 192.

with her cargo :—it was held that the ship had not sailed, but had merely gone into the roads to complete her preparations for sailing.[1] So, where a chartered ship was loaded, and left Sunderland harbour with the captain on board, and in a fit state for sailing, but the clearances were not completed, nor the bills of lading signed :—the ship crossed Sunderland bar, and the captain went ashore to get the clearances completed, and sign the bills of lading, which, having done, he received from the charterer the agreed-on advance of the freight :—in the meantime, the ship stood off and on, waiting for the captain ; but, in crossing, she had struck the bar, and she was brought back to repair, and was unloaded,—the captain not having rejoined her :—it was held that the vessel had not sailed in terms of the charter-party.[2]

Besides being fully seaworthy at sailing in the respects before noticed, it is equally essential that the vessel have also a duly certified captain, and first and second mates, or an only mate, and an adequate and competent crew, of sufficient skill and ability for her navigation during the voyage, these conditions being very distinctly, though implicitly, understood in every contract for conveyance, and in the insurance on ship, goods, or freight. Thus, in an insurance case, a vessel was insured at and from Cork to the ship's loading port or ports on the coast of Spain, within the Straits of Gibraltar, including Tarragona, and not higher up the Mediterranean :—Tarragona was at that time in possession of the Spanish, the allies of Britain; but Barcelona, farther up the Mediterranean, was in possession of the French, the enemy: the master intended to go into Tarragona, but, being ignorant of the coast, he passed that port during the night, and, mistaking Barcelona for Tarragona, he was, when entering the former port, captured by the French :—it was held, that the implied warranty to provide a master of reasonably competent skill was not complied with by sending out one who was totally ignorant of the one port and of the other.[3] Where, also, a vessel sailed, on a voyage assured, from the Mauritius to London, with two mates and a full crew of seamen, but the captain, being taken ill, and, being unable to take charge of the ship, had no one on board capable of taking charge during the voyage to England, and therefore he put back to get another officer, and, in doing so, the ship was wrecked :—in an action on the policy, it was held, that there being no one on board competent to supply the master's place in case of illness, the underwriters were thereby discharged.[4]

The same holds in regard to the full complement of the crew being on board. As where an insurance was effected on freight and goods by a ship at and from Portneuf to London, warranted to sail on or before the 28th October ; and on the 26th, the vessel dropped down from Portneuf, with a crew incomplete for the voyage, and on the 28th reached Quebec, which was the nearest place where she could obtain her clearance, and there she completed her crew ; on the 29th the ship obtained her clearance, and sailed next day :—but it was held, that the dropping down, with an incomplete crew, from Portneuf to Quebec, on the 26th, was not a compliance with the warranty in the policy.[5] And where an insurance

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[1] Thompson *v.* Gillespy, 5 El. and Bl. 209.
[2] Hudson *v.* Bilton, 6 El. and Bl. 565.
[3] Tait *v.* Levi, 14 East, 481.
[4] Clifford *v.* Hunter, 1 M. and M. 103.
[5] Ridsdale *v.* Newenham, 3 M. and S. 456.

was effected "at and from Cuba to Liverpool, with liberty to touch and stay," &c., "at any port," &c.; and the words, "with leave to call at Jamaica," were afterwards inserted, and agreed to by all the underwriters, except one:—the vessel sailed from Cuba (ten men being her proper complement) with eight men for Liverpool and two for Jamaica,—proceeded to Jamaica,—landed the two there,—and shipped other two, and was lost on the voyage from Jamaica to Liverpool:—it was held, that the ship was not seaworthy when she sailed.[1] But the owner having once provided a competent crew at the time of sailing, the negligent absence of the crew at the time of a loss is no breach of the implied warranty that the ship shall be properly manned.[2]

Although these were decisions in insurance cases, yet the principles of these decisions are equally applicable to questions under charter-parties, and are too important to be overlooked in considering the obligation as to the seaworthiness of the ship.

The vessel must also be properly dunnaged in the bottom and at the sides of the hold, in order to raise up the loading and prevent her becoming too stiff, and also to preserve the cargo, according to its nature and quality, from leakage and bilge-water, agreeably to the practice of the trade in which she is engaged, or as the particular cargo may require. It is the duty of the owner and the captain to have the ship thus properly and sufficiently dunnaged, as, without being so, she is held to be not seaworthy; and if the goods sustain damage from the want or insufficiency of the dunnage, the owner or captain will be liable in damages to the shipper.[3]

A particular time is usually fixed in the charter-party when the ship must sail for, arrive, or be ready to receive her cargo, at the port of loading; and if the vessel be ready at the time thus fixed to receive the cargo, but if the cargo be not ready to load, or if, during the running of the lay-days, the charterer fail in loading the agreed-on cargo, he will be liable in damages, the measure of which is the amount of freight which would have been carried, less the expenses, and also any profit the ship may have earned during the period over which the charter extends; nor, in order to reduce the amount of these damages, is the shipowner bound to take a new cargo for the most he can get.[4] And in an action by a shipowner against a charterer for not loading in terms of a memorandum of charter-party, in which the ship was said to be "now in the port of Amsterdam:"—it was held that these words did not amount to a guarantee, or an absolute condition in the contract, that the ship was in the port of Amsterdam at the time of making the memorandum of charter-party;[5] and, in another instance, it was mutually agreed by charter-party that "the good ship *Zwaan*, now at Amsterdam, and to sail from thence for Liverpool on or before the 15th March next," under the usual exceptions of "restraints of princes and rulers," and "throughout this charter-party always excepted," but the ship did not sail from Amsterdam in consequence of what was admitted to be the "act of God:"—it was held, that, notwithstanding the words "throughout this charter-party," the sail-

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[1] Forshaw *v.* Chabert, 3 B. and B. 158 [2] Busk *v.* Ro. Ex. Ass. Co., 2 B. and A. 73.
[3] Abbot, 259. [4] Smith *v.* Maguire, 3 H. and N. 554.
[5] Behn *v.* Burness, 8 Jur. *n. s.* 358.

ing of the ship from Amsterdam on or before 15th March was a condition to be executed before the charterer's obligation to take and load the ship.[1]

But if the vessel has not arrived, or is not ready at the time agreed on, the freighter may engage another ship, or refuse to load the cargo, and hold the owner liable in damages.[2] As where a ship was freighted to go in ballast to Jamaica, and bring home from thence a full cargo, which the freighter undertook to provide for her in time for the July convoy, provided she arrived in Jamaica by the 25th June; but she did not arrive until some days afterwards:—it was held, that, under these circumstances, the fixed time being the furthest which the party would grant, the merchant freighter was thereby discharged from his contract to furnish a cargo.[3] In another case, it was agreed by charter-party, that the ship should proceed to Trieste, and there load a full cargo of wheat, and proceed therewith to a port in the United Kingdom—"the vessel to sail from England on or before the 4th February next:" in an action by the owners against the merchant for not providing a cargo, it was held, that this condition of sailing from England, on or before the day fixed, not having been complied with, he was not bound.[4] Where, also, the charterers of one ship from Cadiz to St. Blas, and thence to Guyaquil to take in a homeward cargo, chartered another ship to go out in ballast and bring home a cargo from Guyaquil, with a proviso, that, in the event of the non-arrival of the first-mentioned ship at that port, then the charter-party, and every clause of agreement thereof, in case no shipment had been made under it, were to cease, determine, and be utterly void;—the first-named ship did not arrive at her out-port until long after the expiry of the lay-days, and no cargo was furnished to the second ship:—it was held, that "non-arrival" meant non-arrival within such time as might answer the purposes of the charterers of the second ship, and that the first ship not having arrived in time to answer these purposes, and the delay not being attributable to the charterers, the charter of the second ship was void, and the charterers were not bound to provide a cargo for her.[5] Where, also, a vessel was engaged to go from Portsmouth to St. Michaels, and bring back a cargo of fruit direct to London, the charterer being allowed thirty-six days for loading and unloading, to commence on 1st December then next; and if the ship did not arrive at St. Michaels by the 31st January thereafter, the charterer was to be at liberty to annul the contract:—it was held, that the captain was bound to proceed at once to St. Michaels, and was not at liberty to make an intermediate voyage for his own purposes, although, notwithstanding such intermediate voyage, he arrived at St. Michaels before 31st January.[6]

It must be determined according to the fair intention of the parties, to be gathered from the language used, whether the sailing or non-arrival of the vessel is a condition, the non-performance of which goes to the very root and consideration of the contract, as was held in the cases now referred to, or whether the conditions that the vessel must sail, arrive, or be ready to load, are to receive a reasonable construction.

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1 Croockewit *v.* Fletcher, H. and N. 893.
2 Abbot, 179.
3 Shadforth *v.* Higgins, 3 Camp. 385.
4 Glaholm *v.* Hayes, 2 Scott, *n. r.* 471.
5 Soames *v.* Lonergan, 2 B. and C. 564.
6 M'Andrew *v.* Adam, 1 Bing. *n. c.* 29.

Thus, where by charter-party the ship was *forthwith* to take the goods on board; but it was known that the ship needed repairs, and she was not ready till 7th July; and in an action of damages for loss of freight of the cargo, it was held, that the strict meaning of the word "forthwith" could not be taken, as it was known the ship needed some repairs, and that, on the whole, taking in all the known circumstances, which made despatch more or less difficult, the ship was ready in a reasonable time.[1] By another charter-party it was agreed, that the vessel should sail for Sydney in New South Wales, and having discharged her cargo, should proceed to some port on the Malabar coast, and take in a home cargo there from the freighter's agents; and, in case the ship should not arrive at her port of lading, and be ready to take in her cargo, on or before the 28th November, unless prevented by stress of weather or other unavoidable impediment, it should be at the option of the freighter to load her with a home cargo or not, as he might think proper;—the vessel did not arrive at her port of lading on the Malabar coast until some time in January, and the freighter refused to load her:—in an action of damages by the owner for this breach, it was held, that the words "unavoidable impediment," as there applied, denoted such an obstruction as a man could not, by any reasonable degree of foresight, have prevented, and did not, therefore, demand from the owner or captain greater efforts than were usual and in the ordinary course; and that the captain having used ordinary diligence on the voyage, his non-arrival at the time was to be ascribed to unavoidable impediment, though he might, by extraordinary efforts, have been able to arrive in time.[2] So also, by a charter-party, it was agreed that a vessel should sail in ballast to a safe and convenient port near Cape Town, and there load a full cargo, which the charterer agreed to load and pay freight for: it was averred that, though the charterer was ready and willing to appoint and put on board a proper person as supercargo, who would have indicated a safe and convenient port near Cape Town for receiving on board the cargo, the owner would not permit the ship to proceed in ballast on the voyage: but it was held, that it was the duty of the charterer to select the port, and give notice of it to the owners, before the commencement of the voyage; and that, as he gave no notice of a safe and convenient port, &c., or anything equivalent in law to such notice, he had no claim against the owners.[3]

When arrived at the port of loading or discharge, the freighter must proceed, without delay, to load or discharge the cargo, which the ship must be ready to receive or discharge, and, for doing which, a certain number of days, called *lay-days*, is allowed. It is proper to express whether the days stipulated for this purpose are working or running days, for if running days are stated, and no usage proved to the contrary, Sundays will be included in the calculation of the lay-days.[4] And when a charter-party contained the following clause,—"The vessel to be loaded in Liverpool in fourteen days, and to be discharged, weather permitting, at not less than 25 tons per working day (holidays excepted), the days to commence on the ship being in turn and ready to deliver:"—it was held that Sundays were to be included in the calculation of the lay-days allowed for

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1 Simpson *v.* Henderson, 1 M. and M. 300.
2 Grainger *v.* Dent, 1 M. and M. 475.
3 Rae *v.* Hackett, 12 M. and W. 724.
4 Brown *v.* Johnston, 10 M. and W. 331.

loading, and that the words "holidays excepted" did not apply to the fourteen days within which the vessel was to be loaded.[1] If no special place of loading or discharge is stated, the lay-days will run from the time of the ship's arrival *at* the usual place of loading or discharge *in* the port, and not *at* the port,—although, for the purposes of navigation, some part of the cargo may have been discharged at the entrance.[2] When the usual place of discharge is a dock, the lay-days are computed from the time of the ship's arrival in the dock, and not at the place of unloading.[3] And where a collier arrived in the Port of London, off Gravesend, and was detained there, by the harbour-master, from the 9th to the 20th, when she received orders to proceed to the Pool,—the ordinary place for discharging such cargoes:—it was held that the lay-days did not begin till then.[4]

If no precise number of lay-days are fixed, the vessel must remain the usual number of days which are allowed at the port of loading for the cargo which the ship is to take in; and if the charter-party bear that the ship is to be loaded "in the customary manner," this is understood to be an engagement to load within a reasonable time, according to the usage of the port of loading, without reference to any unforeseen occurrences. As where a chartered vessel was to proceed to Cardiff, and there load a full cargo of coals from the freighters' factors, "*in the customary manner*," no precise time being mentioned:—it was held, that this means a loading according to the usage of that port, and within a reasonable time; and, when this loading was delayed for an unreasonable time, from difficulties connected with the railways and the collieries, which were beyond the freighters' control, the freighters were not thereby relieved from liability for the delay in loading.[5] But when a vessel was chartered to proceed to a colliery (but over which the freighter had no control), and take a cargo of coals on board for the freighter, *and both parties then knew* that the colliery was not at work,—the steam-engine having received an accident, which they were told would be repaired in a short time, and that the vessel would be loaded in a few days after the colliery was again set to work, according to the practice of the port,—viz, that the ships were loaded in their regular turns according as they were entered on the colliery books,—and the ship was loaded in her turn, though several days later than the colliery agents had led the parties to expect:—it was held that, if the steam-engine was repaired and the colliery set aworking in a reasonable time after the date of the charter-party, and if the ship was loaded within a reasonable time after the colliery was working, the freighter was not liable to compensate for the delay in the loading.[6]

So also where a freighter engaged by charter-party to load a cargo of coals on board a ship, "to be loaded with usual despatch," and he commenced the loading by bringing the coals in boats along a canal to the dock where the ship was lying; but, before the cargo was fully laden, a severe frost made the canal unnavigable, and the ship was, in consequence, detained thirty-four days:—it was held, that the words "usual despatch" meant "usual despatch of persons having a cargo ready for loading,"—and that, therefore, the freighter was liable for the ship's detention.[7] And in the

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[1] Niemann *v.* Moss, 6 Jur. *n. s.* 775.
[2] Brereton *v.* Chapman, 7 Bing. 539.
[3] Brown, *ut sup.*
[4] Kell *v.* Anderson, 10 M. and W. 498.
[5] Adams *v.* R. M. S. P. Co., 1 Scott, *n. s.* 492.
[6] Harris *v.* Dreesman, 28 L. J. 210.
[7] Kearon *v.* Pearson, 7 H. and N. 386.

charter of a ship from Sunderland to Carthagena, the charterer engaged that she should, "with all possible despatch," load in the South Dock, in the customary manner, from the charterer's agents, a full and complete cargo of coke (charred coal), to be loaded "in regular turn:"—in an action for not loading the ship "in regular turn" in terms of the charter-party, it was held, that evidence was not admissible to show that, *according to the* custom of the port of Sunderland, the ship was bound, under such a charter-party, to wait its turn according to a list kept by a coke manufacturer, not named in the charter-party, but mentioned at the time, provided reasonable despatch was used.[1]

Assuming, however, that the ship is at her port of loading in due time, is properly dunnaged, and in every way ready to take in her cargo, it is the duty of the captain to load that cargo on board, according to its particular kind, and to the custom of the particular port of loading, and to have sufficient ropes, tackle, &c., prepared for taking the cargo into the ship's hold.[2] If, by the charter-party, the cargo is to be shipped and put on board at the shipper's expense, and he or his agent refuse so to do,—the captain can employ men to put the cargo on board, and for the expenses thus incurred the shipper will be liable.[3] And if the ship has, by the charter-party, to receive the cargo from alongside, and outside a bar at the port of loading, which the ship cannot safely cross to load inside,—the freighter cannot throw the expense of the lighterage upon the shipowner.[4] Should receipts be granted by the captain or mate on receiving goods on board, care should be taken not to deliver the signed bills of lading to any one, unless to him who can give up these receipts in exchange for the bills; otherwise, the captain and owner may be exposed to a twofold claim for the same goods,—by the holder of the receipt, and by the holder of the bills of lading.[5] And where merchants had purchased on their own credit for a third party, and had shipped on board a general ship, certain goods, for which the mate had given a receipt to the merchants, but a third party fraudulently induced the ship's brokers to get the captain to sign the bills of lading, deliverable to the order of the third party, though the mate's receipt was not produced:—it was found by the jury, that the captain was not justified in signing the bills of lading without the production of the mate's receipt.[6]

The captain has, likewise, the sole direction and superintendence of arranging and stowing the cargo in the hold of his ship, and, in a general ship, care should be taken so to arrange and stow the several articles of cargo, that one do not receive damage from another. For any damage arising to the goods from their improper stowage, or from his neglect, he is responsible to the shippers; but if the damage happen from the misconduct of the mate or others of the crew, and not from any fault of his own, he is not responsible. If, however, the shipper appoints a stevedore,[7] who takes charge of and acts in the stowage of the cargo, the cap-

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1 Hudson *v.* Clementson, 25 L. J. 234.
2 Abbot, 258.
3 Fletcher *v.* Gillespie, 3 Bing. 635.
4 Trindade *v.* Levy, 2 F. and F. 442.
5 Craven *v.* Ryder, 6 Taunt 433.
6 Schuster *v.* M'Kellar, 7 El. and Bl. 704.
7 A stevedore is the person whose duty it is to place and pack the cargo for the trim of the vessel,—to rightly place the parts of the cargo for firmness and solidity,—to regulate the space each part occupies, and then to calculate the tonnage measurement so occupied, for the freight.

tain is not liable for damage done to goods in the course of taking them on board, or of the stowage of them, though this responsibility may be altered by an established custom or by special agreement. But a mere agreement that the stevedore shall act under the captain's orders, does not throw on the captain the responsibility for acts of the stevedore, not shown to have been done under the captain's orders. And, therefore, where a stevedore is appointed, a person sending goods to be shipped on board a general ship cannot assume that his goods are to be shipped or stowed by the captain rather than by the stevedore, and cannot hold the captain liable for damage done in shipping or stowing his goods.[1] And where by a charter-party the charterer agreed to load on board at Trinidad "a full and complete cargo of sugar, molasses, and (or) other produce;" and the custom at Trinidad is to load sugar in hogsheads, and molasses in puncheons, in which they are carried more conveniently and with less loss; and a full and complete cargo of sugar and molasses means a cargo so packed;—it was held, that this custom was admissible in evidence, and was applicable to such a charter-party, as it did not control, but only explained, the charter-party, which ought to be construed with reference to the usage at the port of loading, this custom being reasonable and good in law.[2]

No part of the cargo or of the goods laden ought to be lashed or carried on deck, for, besides being more exposed to danger, and an obstruction to the working of the ship, if such goods be thrown overboard, their loss (unless as after mentioned) is not made up by an average contribution, but, when not so thrown overboard, they are subject to an average contribution. "Goods carried on deck are not in that part of the ship where goods are usually carried; they are in more than usual peril, and a usage that they are not covered by an ordinary policy on goods, but that they require a distinct explanation to the underwriter, of the part of the ship in which they are to be carried, or (where that will imply the same information) of the nature of the goods, is not at variance with any part of the policy, is essential to the information which the underwriter ought to receive to enable him to estimate the risk and calculate the premiums, and to a portion of that fairness which ought to be rigidly observed upon all these contracts."[3] Unless, therefore, goods are carried or lashed on deck, according to an established and well-known usage in any particular trade,—as carboys of vitriol,[4]—timber laden on deck on a voyage from Quebec to London,[5]—or pigs stowed on deck on the passage from Waterford to London,[6]—no part of the cargo should be laden or carried on deck, and not in any case without the express consent of the shipper. And as to the timber trade from British North America and Honduras, it is enacted by 5 Vict., cap. 17, "That it shall not be lawful for any part of the cargo of any ship or vessel wholly or in part laden with timber or wood goods, and clearing from any British port in North America, or the settlement of Honduras, for any port in the United Kingdom, between 1st September and 1st May in each year, to be stowed or placed during any part of the voyage upon or above the deck of such ship or vessel, and the captain or master of every ship or vessel clearing shall not be permitted to sail with-

[1] Blackie *v.* Sturbridge, 8 W. R. 239. [2] Cuthbert *v.* Cumming, 1 Jur. *n. s.* 686.
[3] *Per* Lord Lyndhurst in Blacket *v.* Ro. E. Ass. Co., 2 C. and I. 250.
[4] Da Costa *v.* Edmunds, 4 Camp. 142. [5] Gould *v.* Oliver, 2 Scott, *n. c.* 241.
[6] Milward *v.* Hibbert, 3 Ald. and El. *n. s.* 120.

out first producing a certificate from the clearing officer that all the cargo is below deck." It is also enacted by section 170 of the Customs Act, 16 and 17 Vict., cap. 107, in almost the same words, that before any clearing officer permits any ship wholly or in part laden with timber or wood goods to clear out from any British port in North America, or the settlement of Honduras, for any port in the United Kingdom, at any time *after* 1st September or *before* 1st May in any year, he must ascertain that the whole of the ship's cargo is below deck, and he gives the captain a certificate to that effect; and no captain of a ship so laden must sail, during such time, from any of these ports for any port of the United Kingdom, until he has obtained this certificate. By section 171, no captain must place, or permit or cause to be placed, or to remain, above or upon deck, any part of the cargo of his ship for which said certificate has been obtained, until she has arrived at her port of destination, unless in case of springing a leak, &c.; but store spars, and other articles for ship's use, are not taken to be cargo in the sense of the Act. And if a captain sail, or attempt to sail, without having obtained the required certificate, or if he place or permit, or cause to be placed, or to be, or to remain, above or upon deck, any part of the cargo, unless as aforesaid, he, for every offence, forfeits and pays any sum not exceeding £100.

Where, after the 1st September, an insurance was effected on the cargo and freight, including the portion above deck, of a ship coming within the foresaid prohibitory enactments, and the insured knew, at the time, that part of her cargo was upon deck, and he intended that she should sail after the 1st September, with this part of her cargo upon deck; and the ship having been lost;—it was held, that the whole voyage was illegal, and that the insured could not recover under the insurance;[1] and the custom that, under the ordinary form of the policy, underwriters are not liable for general average, in respect of that portion stowed upon deck and thrown overboard, is an established custom, and does not contradict the terms of the policy.[2]

Again, the captain, especially of a general ship, must not take in as part of his cargo any goods of a dangerous, corrosive, or inflammatory nature. Section 329 of the Merchant Shipping Act, 1854, enacts, that no person is entitled to carry in a ship, or to require the captain or owner so to carry, any aquafortis, oil of vitriol, gunpowder, or any other goods which he considers to be of a dangerous nature, and he can refuse to take on board any parcel he suspects as containing any goods of a dangerous nature, and can require a parcel so suspected to be opened, so as to ascertain the truth. The person who thus sends or carries any goods of a dangerous nature, *without distinctly marking their nature on the outside* of the bale, or cover, or packing, or otherwise giving notice *in writing* to the captain or owner, at or before the time of so sending or carrying these goods, incurs a penalty not exceeding £100.

In regard to goods of a dangerous nature, the general rule is, that, in a general ship, the shippers, where they have the knowledge, or the means of knowledge, undertake not to deliver to be carried in a general ship packages of goods of a dangerous nature, which, on inspection, those acting for the shipowner may not be reasonably expected to know to be of a

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1 Cunard *v.* Hyde, 29 L. J. 6.

2 Miller *v.* Tetherington, 10 W. R. 356.

dangerous nature, without expressly giving notice that they are so: but if the captain knew, or ought to have known, as he could have known by inspection, that casks or packages delivered for shipment contained bleaching liquid or powder (the chief ingredient of which is the corrosive chloride of lime), then the duty of giving notice of the dangerous nature of the goods does not arise, as the captain can refuse to accept the goods, or, at all events, can take care that they are safely and properly stowed.[1] And where saltcake,—a corrosive and destructive substance,—was delivered for shipment in bulk, and not in casks, and was stowed between and among and in contact with casks of salt provisions, which, and their hoops, were rotted, corroded, and destroyed by the saltcake, and the brine escaping from these casks damaged the saltcake:—to an action by the shipper against the shipowner for damages, by negligently and carelessly stowing the saltcake, it was held a good answer that the shipper did not inform the shipowner of the corrosive and destructive nature of saltcake, or ascertain that he was so informed, in order to the safe and proper stowage; but, by delivering the saltcake in bulk, the shipper thereby and otherwise represented to the shipowner, and induced him to believe, and he did reasonably believe, that the saltcake might be placed in contact with casks.[2]

Should the goods or the cargo be badly or improperly stowed, the owner and the captain are liable to the charterer for the damage that the goods or cargo sustain from having been careless, improperly, or negligently stowed, unless the stowage has been performed by persons appointed by the charterer himself;[3] but it will require to be distinctly established that the stowage was done at the charterer's own risk, in order to relieve the owner and captain from liability. And where, by a charter-party, a ship was placed at the disposal of the charterer for a certain time, and the owners were to appoint, victual, and pay the captain and officers of the ship; the cargo was "to be taken on board and discharged by the charterer, the crew rendering customary assistance, so far as they may be under the orders of the captain, and the charterer to have liberty to appoint stevedores and labourers to assist in the loading, stowage, and discharge thereof, but these being under the control and direction of the captain, the charterer not in any case to be responsible to the owner for damage or improper stowage;" and also, that the "captain and owner shall devote the same attention to the cargo, shall use the same endeavours to promote despatch, and shall in every respect be and remain responsible to all whom it may concern, as if the said ship was loading and discharging her cargoes and performing her voyages for account of the said owner, and independently of this charter-party;" it was held, that, under this charter-party, the owner was responsible for improper stowage.[4]

When the ship has been fully laden and cleared out, the captain must sail with the first fair wind for the port of discharge; and should the vessel, after being thus fully laden, be frozen up,[5] or be detained by stormy weather, or by want of wind, or by contrary winds,[6] the charterer will not be liable for this detention.

But, should the cargo not be loaded, or begun to load, during the running

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1 Brass *v.* Maitland, 6 El. and Bl. 471.
2 Hutchinson *v.* Guion, 4 Jur. *n. s.* 1149.
3 Sack *v.* Ford, 32 L. J. 12.
4 Blackie *v.* Sturbridge, 8 W. R. 239.
5 Pringle *v.* Mollett, 6 M. and W. 802.
6 Jamieson *v.* Laurie, 8 Brown's P. C. 427.

of the lay-days, it is the captain's duty, immediately before the expiry of these days, to intimate to the charterer, under form of protest, that the lay-days expire on a certain date (stating the precise day), and that the ship will then lie on demurrage, and will continue so to lie for a specified number of days longer, and, if the cargo be not then fully laden (if any part has been previously laden), the vessel will sail with the cargo as far as laden, or, if no part has been laden, will then engage for another cargo, and that, in any case, the charterer will be held liable in all the damages sustained and to be sustained; and the measure of these damages is the amount of freight that would have been earned, less the expenses; but, so as to lessen the damages, the owner is not bound to take a new cargo for the most he can get.[1]

2.—*Bills of Lading.*

A bill of lading is the formal acknowledgment by the captain of a general ship or of a chartered ship that he has received on board certain specified goods, or a certain stated amount of cargo, from a party named, the shipper, which he undertakes to deliver, under the conditions therein enumerated and after noticed, to that party, or to a party named, or his assigns, he or they paying freight therefor, as specially stated in the bill of lading, or, if there is a charter-party, conform to charter-party,—with primage and average accustomed. Bills of lading do not now require to be stamped with a 1s. 6d. stamp, in addition to the 6d. stamp as formerly;[2] and as it appears doubts have been entertained whether it is a duty of the shipper or charterer to hand to the shipowner or his captain copies of the bill or bills of lading for the separate parts of the cargo,—unless that duty is created by an express obligation in the charter-party, or is incorporated in it by mercantile usage, or arises from the peculiar circumstances of any particular case,[3]—the furnishing to the captain for ship's use of a copy of the bill or each of the bills of lading, signed by him, should be specially stipulated.

Frequently the captain, or those acting for him on board, gives a receipt for the goods when sent on board, and the captain is required, afterwards, to sign bills of lading for the same goods. But he should be specially cautious that the receipt and also the bills of lading precisely correspond with the quantities and marks of the goods actually received on board, as these were noted, at the several times of receiving them on board, in the log-slate, ship's cargo-book, or ordinary log-book. And he must also take special care not to sign bills of lading with any words in them contrary to truth or inconsistent with the facts, and not to deliver the bills of lading without having the receipt returned to him, or seeing it destroyed, and then the bills of lading can be delivered to him who destroys the receipt, or delivers it up in exchange for the bills. If these precautions be not attended to, the captain and the owner may incur double responsibility—one, to the shipper, for delivery of the goods made deliverable by the bills of lading to his own order, or to the consignee named by him, whom he alone has the legal right to name; and another, to the holder of the receipt, who may have purchased the goods, or advanced

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1 Wilson *v.* Hicks, 26 L. J. 242; Smith *v.* M'Guire, 2 H. and N. 554.
2 26 and 27 Vict., cap. 22, sec. 4. 3 Dutton *v.* Powles, 8 Jur. *n. s.* 970.

money on the faith of it. This is well illustrated by the following case:—Merchants purchased for a third party, but on their own credit, certain goods, which they warehoused in their own name, and debited the third party with the price and their commission. The third party had, in his own name, engaged room for these goods in a general ship put up for Calcutta, and, at his request, the merchants delivered the goods to a lighterman to be shipped in this ship,—the lighterman engaging to deliver to them the mate's receipt for the goods, which, being in blank, he gave to the merchants, and which the third party promised to redeem from the merchants;—but, instead of doing this, he fraudulently induced the ship's brokers to get bills of lading *to his own order*, to be signed by the captain, *though the mate's receipt was not produced.* These facts became known to the merchants only after the ship had sailed, and they demanded the goods, both here and on the ship's arrival at Calcutta; but the captain delivered the goods at Calcutta to the holders of the bills of lading:—in an action against the shipowner and the captain, the jury found, that the captain was not justified in signing the bills of lading *without the production of the mate's receipt.*[1]

It will be easily seen that the dispute arose, in this case, from the impropriety or negligence of the captain (to say the least of it) in signing and delivering bills of lading without having the mate's receipt returned to him; and when the cargo has been delivered and taken on board by weight, number, or measure, the captain ought to be very careful that the weight, number, or measure expressed in the bills of lading, corresponds precisely with the weight, number, or measure as had been noted in the log-slate, cargo-book, or log-book. Though the statement in the bill of lading is, *as between the shipper and shipowner*, not decisive proof of the real quantity actually shipped, and is held to operate merely as a receipt, liable to be corrected by evidence; yet, even in this instance, the mere circumstance of a bill of lading being challenged as untruthful tells very strongly against the veracity and correctness of the subscribing captain, and the result may be much more serious if such a bill of lading be in the hands of an onerous endorsee. Take the following cases as examples of both:—

Thus, in regard to the first point,—the captain had been induced by the friend (as alleged) of the shipper's agent at Singapore to sign a bill of lading for 890 bags of pepper, while only 790 had, in fact, been shipped:—it was held, that, as between the original parties, the bill of lading was merely a receipt, liable to be opened up by evidence of the real fact, to be ascertained by a jury, whether, in fact, 890 bags or only 790 were shipped.[2] And where 1676 bags of rye, meal, or bran, all being marked alike "S. S. C. M.," and some weighing 12 stones and some 8 stones, were shipped on board a general ship, and stowed without distinction; and the captain signed two bills of lading, one for 1299 bags, and another for 467 bags, the latter stating it to be, "rye, feeding meal, or bran, gross 35 tons 9 cwt. English weight,"—and the captain adding at the foot, "contents unknown and not responsible for weight;"—it was held, that, under this latter bill of lading, the captain was bound to deliver 467 of

[1] Schuster *v.* M'Kellar, 7 El. and Bl. 704.
[2] Bates *v.* Todd, 1 M. and R. 106.

the 12-stone bags, as the gross weight in the bill of lading could only be satisfied by all the bags delivered being of the larger size.[1]

But, in regard to onerous and innocent consignees or endorsees of bills of lading, section 3 of the 18 and 19 Vict., cap. 111, enacts, that "every bill of lading in the hands of a consignee or endorsee *for valuable consideration*, representing goods to have been shipped on board a vessel, shall be conclusive evidence of such shipment, *as against the master or other person signing the same*, notwithstanding that such goods, or some part thereof, may not have been so shipped, unless such holder of the bill of lading shall have had actual notice, at the time of receiving the same, that the goods had not been, in fact, laden on board; provided that the master, or other person so signing, may exonerate, free, and discharge himself in respect of such misrepresentation, by showing that it was caused without any default on his part, and solely by the default of the shipper or of the holder, or some person under whom the holder claims."

Previous to the passing of this Act (14th August 1855), the following cases, among many others, had been decided, as to how far a bill of lading, signed by the captain, was evidence of the statements in it. In one case, a corn merchant in this country sent orders to a house in Russia for the purchase of corn, directing them to draw on H. & Co. of London for the amount, and he chartered a vessel and sent it to Russia to be loaded:—the Russian house subsequently advised the corn merchant that they had purchased and shipped the cargo on his account, and had drawn on H. & Co. for part of the price, and on himself for the balance; but the bills of lading were made deliverable to the *shippers' own orders*, and an *endorsed* bill of lading was forwarded to H. & Co., and an *unendorsed* one and an invoice of the cargo were sent to the corn merchant:—the bills drawn were, however, dishonoured, and, on the arrival of the ship, the shippers' agent claimed the cargo under the endorsed bill of lading, but the captain delivered the cargo to the order of the corn merchant, and not to H. & Co, agreeably to his bill of lading:—in an action against the shipowners for not delivering according to the shippers' orders, it was held, that the property of the corn did not, upon the shipment of the corn, absolutely belong to the corn merchant, but only under the condition that the bills were accepted; and that, as these were not accepted, the corn never did belong to the corn merchant, and that, therefore, the Russian house was entitled to recover from the shipowners its value at the time it was delivered to the corn merchant.[2] So, where Dantzic merchants shipped, in a ship chartered by them, a cargo of wheat for an Amsterdam merchant, and took the bill of lading deliverable to "order or assigns," which they endorsed in blank, and forwarded to a London firm, to follow the instructions of the Amsterdam merchant, on whose account they had drawn on the firm for the price, and, in answer, the London firm informed the Dantzic merchants, the shippers, that the firm would follow the orders of the Amsterdam merchant with the bill of lading, and that the drafts would be protected on presentation, for his account. In fact, he had ordered the cargo for a third party; but this was not known to the merchant shippers, in whose favour the Amsterdam merchant had previously informed the London firm that he had opened a credit with them on

[1] Bradley *v.* Dunipace, 7 H. and N. 200. [2] Brandt *v.* Bowlby, 2 B. and Ad. 932.

account of this third party. However, the latter, who had had similar dealings with them, obtained from another firm an advance, upon the promised deposit of the bill of lading, which (though there was no evidence as to how it came into his possession) he handed to them *endorsed by the merchant shippers*, on 8th January; and, on the same day, this second firm handed it over to their bankers, as a security for an advance then actually made by them in their ordinary course of business:—next day, the drafts of the shippers were refused acceptance by the first firm, who also refused to return the bill of lading, and thereafter this firm and the Amsterdam merchant failed, without any part of the price having been paid. On the arrival of the vessel, the shippers obtained possession of the cargo, and refused to deliver it up to the brokers: but it was held, that, when the cargo was shipped, and an endorsed bill of lading was sent to the first London firm, the cargo belonged to the party for whom it had been shipped, and that the delivery of the bill of lading by that firm to the said third party (as was assumed by the court) was not, under the circumstances, an excess of authority, as there was no condition that the bill of lading should not be handed over before acceptance of the drafts.[1] In a previous case, a Hull merchant contracted with the partner of a London house, also carrying on business as merchants at Odessa, for the purchase of a quantity of linseed, to be paid for by drafts at certain dates on the purchaser, who chartered a vessel to proceed to Odessa, and there take on board the linseed "from the agents of the freighter," and, being so loaded, to proceed to Hull, "and deliver the same to the order of the freighter, on being paid freight:"—the ship arrived at Odessa, and the captain having produced a copy of the charter-party, the Odessa house commenced loading the linseed, and, on account of it, drew two bills on the purchaser, which were duly paid; but, not being able to procure the full quantity of linseed, the captain agreed to take wheat in place thereof, and wheat was shipped accordingly:—but the Odessa partner got the captain to sign bills of lading, making the cargo deliverable "*to order or to assigns*," and he endorsed them for value to a third party, who transferred them to others:—it was held, that there was no such delivery to the Hull merchant as to give him the right of property or possession in the goods.[2] And when it is the purpose of the merchant abroad to retain his right of property in goods he has shipped for this country, until the bills drawn by him for the price are accepted, the bill of lading should be sent by him *endorsed* to his agent here, to be delivered by the agent to the proper party, when the latter has accepted the bills so drawn:—but, when such a precaution has not been adopted, it has been held, that the property in the goods shipped is at once acquired by him to whom they are shipped.[3]

But it does not follow that a bill of lading signed by the captain is to be taken generally as conclusive evidence (*i.e.*, decisive proof) of the goods therein stated having actually been shipped, as against the shipowner, in favour of an onerous holder of the bill of lading. For instance, in an action by a party against the shipowners, for not delivering goods

[1] Gurney *v.* Behrend, 3 El. and Bl. 622.
[2] Ellershaw *v.* Magniac, 6 W. H. and G. 370.
[3] Kay *v.* Cottesworth, 6 W. H. and G. 593.

said to have been shipped on board their vessel, to be delivered to him, a bill of lading was produced, signed by the captain, stating the goods to be shipped by one of the owners, and to be delivered to this third party or assigns, which bill of lading he held for value; but (being also the managing owner) the other owner proved, that, in fact, the goods were not shipped at all:—it was held, that he was not prevented from doing so by the bill of lading, as the managing owner knew the fact, and his knowledge was the knowledge of this third party.[1] Likewise, where a captain has signed a bill of lading for goods which had not been received on board, and this bill of lading was pledged with third parties, by those to whom the captain had delivered it, and endorsed to these third parties, as a security for advances made on the faith of this bill of lading:—but, in an action by the third parties against the shipowners, for not delivering the goods thus acknowledged by the bill of lading to have been shipped on board, it was held that they could not recover.[2] And it has been held that, when a captain has once signed bills of lading for goods shipped on board his vessel, his power of signing bills of lading is thereby at an end.[3] Therefore, if a captain is asked to sign a second bill of lading for the same goods, or a second set of bills of lading for the same cargo, he may be well satisfied that some fraud or deceit is intended, and he ought not to sign, without ample security against the appearance of the former bill or set of bills, otherwise he may expose his owners to double claims for the same goods or cargo, and himself, under the before-quoted section of the Bills of Lading Act, to a criminal prosecution for fraud and imposition.

If goods or cargo have been actually shipped and bills of lading signed, the shipper cannot insist on having these relanded and redelivered to him, without paying the freight that may become due for the carriage, and securing the captain against the bills of lading he has signed. "By the usage of trade, the merchant, if he redemands the goods in a reasonable time before the ship sails, is entitled to have them delivered to him, *on paying the freight that might become due for the carriage of them, and on indemnifying the captain against the consequences of the bills of lading he may have signed for them.* It would be most unjust to the owners and the captain of the ship if we were to hold that, upon a simple demand, at any time, the goods must be delivered back in the port of outfit."[4] But though a shipper cannot, after his goods are shipped, and a bill of lading signed, require these goods to be relanded and redelivered to him, unless under the foresaid conditions, yet, upon the shipment of the goods in a trading ship belonging to the person to whom they are shipped, who has taken the bills of lading, making the goods deliverable to a party therein named, whom he advised of the shipment,—directs him to insure,—and advises him of a bill drawn on him against the proceeds of the goods,—he can, notwithstanding, specially endorse the bill of lading, making the goods deliverable to the party named,—with the condition of his giving security for certain payments,—otherwise, to a party also named, to whom the shipper sent the bill of lading, and desired him, out of the proceeds of

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[1] Berkely *v.* Watling, 7 Ad. and El. 28. [2] Grant *v.* Norway, 10 M. G. and S. 566.
[3] Hubbersty *v.* Ward, 8 W. H. and G. 330; see also M'Lean *v.* Fleming, 2 H. L. Sc. 128, and Brown *v.* Powell, L R. 10 C. P. 562.
[4] *Per* Lord Campbell, in Tindall *v.* Taylor, 4 El. and Bl. 219.

the goods, to secure himself for the balance due by the shipper to him:—the party named in the bill of lading had paid the bill drawn on him, but did not comply with the conditions of the foresaid endorsement; and, the goods having arrived, it was held, that the shipper had not parted with the property of the goods, by delivering them on board a ship so employed, nor by taking the bill of lading as aforesaid, he being entitled to change the destination of the goods, till he had delivered them, or the bill of lading; and, therefore, the last special endorsement passed the property to the party named in it.[1]

There are usually three bills of lading,—one for the merchant or shipper,—another for his agent or consignee, or the purchaser,—and the third the captain retains for his own use and information, and for his guidance in delivering the cargo or goods. But these three form only one contract for the conveyance and delivery of the cargo or goods therein mentioned; and, therefore, when one has been performed, the others become void. In the coasting, carrying, coal, and lime trades, commonly only one bill of lading is used, which is the sole evidence of the contract for the conveyance of the goods, and which is delivered to the shipper, who forwards it to the person to whom the goods are to be delivered. The bill of lading is held to be the captain's solemn acknowledgment of having received from a party named, and having on board, the cargo or the particular goods marked and numbered on its margin,—and contains his obligation to deliver in like good order and condition, under the exceptions to his and the owner's liabilities, to the party named, or to the shipper's order, or to his assigns, or to order of assigns, he or they paying therefor according to the specified or agreed-on rate of freight, with primage and average accustomed.

But it has been held, that the description of an article in a bill of lading, as "one box containing about 248 oz. of gold dust," was not a compliance with section 503 of the Merchant Shipping Act, which requires the "true nature and value" of any gold, silver, &c., to be inserted in his bills of lading, or otherwise declared in writing to the captain or owner.[2]

Freight will be considered in a subsequent chapter. The word "primage," here used, means a small sum paid to the captain for his own use, by the shipper or consignee, for his care and superintendence in loading and discharging the cargo; and the term "average" applies to certain small charges, called *petty* or *accustomed* averages, of which, generally, one-third falls to the ship, and two-thirds to the cargo. Both these indefinite terms, depending on the differing customs and usages of various ports, are very often adjusted at a precise sum for the voyage; but where the shipping contract (not a charter-party) did not mention primage, and the captain had agreed with his owner for a fixed sum in "lieu of all cabin and other allowances," but he signed the bill of lading that the goods were to be delivered to the consignee, "he paying freight for the same as per charter-party, with primage and average accustomed:"—it was held, that the captain was entitled to receive primage from the consignee.[3]

Sometimes, also, when a certain number of lay-days are stated in the bills of lading, for loading and unloading the goods or cargo, the shipper,

[1] Mitchell *v.* Edie, 11 Ad. and El. 888.
[2] Williams *v.* African Steam-Ship Co., 2 Jur. *n. s.* 693.
[3] Best *v.* Saunders, 1 M. and M. 208.

or person named, is taken bound, if the ship be detained beyond the lay-days, to pay a certain rate of demurrage for each day's detention; and, sometimes also general average, if incurred. These conditions, if according to the agreement of parties, should be inserted on the margin of the bills of lading, in order to make the consignee or holder of a bill of lading liable for these, and to enable the captain to recover in his own name. As, in regard to demurrage, it has been held that a bill of lading, making the cargo deliverable to the consignee "on paying for the goods as per charter-party," does not make the consignee liable, either on an express or an implied contract, to pay the rate of demurrage stipulated for by the charter-party, in consequence of demurrage having been incurred by the detention of the ship *at the port of loading*.[1] And where the assignees of a bill of lading were to receive a cargo, paying freight per charter-party, and on the margin of the bill of lading was written:—"There are eight working days for unloading,"—it was held, that, as there was no bargain in the bill of lading as to payment for demurrage, the assignees were not liable.[2] Though, when the bill of lading makes the goods deliverable to order, on payment of the agreed freights *and other conditions* as per charter-party, of an endorsee of the bill of lading of the goods:—from his doing so, an agreement may be inferred on his part to pay demurrage in terms of the charter-party.[3] And as to general average,—*i.e.*, a general contribution by all, to make good a loss imposed upon the goods or property of one or more, during a voyage for the benefit of all,—when the bill of lading makes the payment of general average (if a general average loss has been sustained) a special condition on delivering the goods, there is no doubt a consignee or endorsee will be liable for a share of the loss effeiring to his goods.[4]

By section 1 of the Bills of Lading Act, before referred to, it is enacted, "that every consignee of goods named in the bill of lading, and every endorsee of a bill of lading, to whom the property in the goods therein mentioned shall pass upon or by reason of such consignment or endorsement, shall have transferred to and vested in him all rights of suit (action), and subject to the same liabilities in respect of such goods as if the contract in the bill of lading had been made with himself." And, under this section, it has been held, that an endorsee of a bill of lading, who has endorsed it over before arrival of the ship and delivery of the cargo, does not remain liable for the freight, but that the rights and liabilities of consignee or endorsee pass from him by endorsement of the bill of lading over to a third party.[5]

By the bill of lading, the captain undertakes to deliver the goods or cargo "in the like good order and condition" as these had been shipped on board,—*i.e.*, not that the captain is to preserve and deliver these in the identical good order as when shipped, but that he is to take all possible good care of them during the voyage.[6] And, by the usual form of bills of lading, "the act of God, the king's enemies, fire, and all and every other dangers and accidents of the seas, rivers, and navigation, of whatever nature and kind soever," are excepted. The term "act of God" applies to accidents arising from natural causes, as winds, tempests, and

1 Smith *v.* Sieveking, 2 Jur. *n. s.* 183.
2 Capel *v.* Comfort, 9 W. R. 694.
3 Wegener *v.* Smith, 15 Scott, 285.
4 Scaife *v.* Tobin, 3 B. and Ad. 523.
5 Smurthwaite *v.* Wilkins, 11 Scott, *n. s.* 812.
6 Shee's Abbot.

storms, as distinguished from accidents arising or resulting from the agency or the carelessness of man. "King's enemies" are pirates, rovers, and all hostile persons. "Other dangers and accidents of the seas," &c., are comprehended under the general term *perils of the sea*, as foundering, stranding, striking on sunken rocks, &c. By section 503 of the Merchant Shipping Act it is enacted, that "no *owner* of any sea-going ship or share therein shall be liable to make good any loss or damage that may happen, without his actual fault or privity (private knowledge), for or to any goods, merchandise, or other things whatsoever, taken in or put on board any such ship, by reason of any fire happening on board, to any extent whatsoever." But the captain not being here mentioned, he is excluded from the benefit of this limitation, unless "*fire*" is specially excepted in his bill of lading.

In the trade to and from the West Indies, an additional exception is generally introduced,—"save risk of boats, so far as ships are liable thereto;" but this exception does not make the owner or captain liable for a loss in the boats, to which they would not be liable in the ship to which the boats belong. As, where goods were despatched from a ship in her boat, according to the usual course of trade, in the West Indies,—and these, together with the boat, were lost in a hurricane; but, under such terms of the bill of lading, the owner was held not liable for the loss.[1] And in a case of insurance on goods from London to Jamaica generally, but the goods were destined to a particular place on the island, and, in such cases, the usual course was for the ship to proceed to an adjoining port, and there tranship her cargo into shallops (small boats), but no information of this was given to the underwriters:—it was held, that they were liable for a loss happening after transhipment on board shallops.[2]

Other conditions and exceptions may be introduced, either limiting the responsibility of the captain and owners, or giving the shippers advantages to which they would not otherwise be entitled, according to the agreement of parties. As when, in a bill of lading for casks of wine, were on the margin the words—"not accountable for leakage or breakage;" these words do not free the captain from the ordinary condition of due care in the stowage of the casks, nor the owner from responsibility for a loss arising from gross negligence.[3] And where the owners of a steam-vessel trading between London and Bristol, by monthly handbills gave notice that they "received goods for shipment on the conditions and agreement only that they are not liable for inward condition, leakage, and breakage," and that they would not be responsible for any loss or damage of or to goods from any cause whatever during the voyage:—in the knowledge of these handbills, two casks of brandy were shipped to be carried to Falmouth, and, during the voyage, one of the casks was stove in, and nearly all its contents lost:—the ship's broker had delivered to the shippers a freight-note bearing that the owners did not hold themselves liable for breakage of oils, spirits, or other liquids, unless from bad stowage:—it was held, that the notice in the handbills formed the terms of the contract under which the casks were shipped, and that these terms

[1] Johnson *v.* Benson, 1 B. and B. 454. [2] Stewart *v.* Bell, 5 B. and Ald. 138.
[3] Phillips *v.* Clark, 5 Jur. *n. s.* 1081.

were not qualified by the freight-note, and, consequently, that the owners were not responsible.[1]

When the quantity, quality, or condition of the goods, or the contents of the casks, bales, or packages, are unknown, or the goods are liable to deterioration,—the captain should qualify his obligation in the bills of lading, to deliver "in the like good order and condition," by writing under his signature, "quantity and quality," or "contents unknown," or, "not liable for deterioration."

Valin says, in his "Commentaire sur l'Ordonnance de la Marine," liv. iii., tit. ii., art. 2:—"The effect of a bill of lading is to bind the master who signs it, and the owner of the ship, as being bound by the acts of his captain, to deliver the merchandise of the same quality, and in the same state, that he has received these, except the sea-damages they may have suffered on the voyage, by the fortune of the sea, and without fault, with a penalty of all expenses, damage, and profits." "In regard to the quality of the merchandise, it is understood that the bill of lading does not make proof but of their generical, exterior, and apparent quality; as, if it is said in the bill of lading that it is of indigo, &c., he must deliver the merchandises of the same kind, in the same number of casks or bales, and under the same mark, as these have been laden. But, in that which concerns the peculiar, internal, or not apparent quality, as if it is said that the indigo is copper-coloured, or blue, dry, and well marketable,—that the cloths are of such and such a kind,—and that in such boxes are the merchandises of such a quality, &c.,—the bill of lading does not engage punctually in this part, unless it can be proved that the hogsheads have been staved, that boxes have been opened, or of some other cavil (*prevarication*) on the part of the master or of the crew." "It is from thence, without doubt, that has come the common enough custom, where the captains of ships add to their signature to the foot of the bills of lading these words, *without allowing or approving*, or, *as said to be*, which signifies the same thing; a consequently useless precaution; for where it treats of merchandise of a generic quality which cannot be doubted, in which case the reservation will produce nothing; while, at a glance, the question itself is of effects packed or in casks, so that the kind could not be more known again at a glance as the kind; it is not at all a want of a reservation then, the master not being able to be bound to render the casks, boxes, or bales, in the same state as he had received these." "Yet, to all purpopes, the precaution is not to be neglected, since, by that means, the captain does not answer, '*neither for the interior quality*,' '*nor for the quantity, weights or measure.*' Finally, the captain cannot be compelled to sign the bills of lading without any reserve."[2]

So that, in addition to the usual exceptions in bills of lading before noticed, it is an ancient practice for captains to write under their subscription to the bill or bills of lading some one or other of the negatory terms before quoted, according to the nature of the goods or their inherent liability to decay or deterioration. Yet such adjected conditions merely apply to the inward or internal state or condition of the goods or articles, and do not exempt the captain from his obligation to deliver the same goods or articles, according to the quantities, numbers, sizes, or marks, as

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[1] Phillips *v.* Edwards, 4 H. and N. 813.

[2] Valin, 30, 31, Poitiers ed. 1828.

expressed in his bill of lading; as where a great number of bags of meal, all marked "S. S. C. M.," and some weighing 12 stones, some 8 stones, were, without distinction, shipped on board a general ship, and two bills of lading were signed, one of which bore "467 bags meal" (the 12-stone bags), "gross 35 tons 9 cwt., under the subjoined marks, S. S. C. M.," and below, the words, "contents unknown and not responsible for weight:"—it was held, that, under this bill of lading, the captain was bound to deliver 467 of the 12-stone bags, as the description in the bill of lading would only be fulfilled by all these bags being delivered of the larger size.[1] And where a cargo of wheat, 3700 chetworts (Russian measure of corn), had been shipped in bulk, and out of barges in a open roadstead,—and, by memorandum on the bill of lading, the captain declared the quantity and quality to be unknown to him,—the wheat was found, on delivery, to have increased in bulk, but there was no evidence as to the cause from which this arose, and no proof of custom or usage as to payment of freight under such circumstances:—it was held, that freight was payable for the wheat according to its bulk at the time it was laden, and not according to its bulk at the time of its delivery.[2]

Bills of lading are transferable by endorsement, the same as ordinary bills of exchange; and it makes no difference whether the endorsement is to a particular person, or blank, or to the bearer,—for the consigner or shipper may, as he thinks proper, fill up the name of any person to whom the goods are to be delivered, or attach any conditions to the endorsement; and, acting in good faith, and according to the best of his judgment, the captain is safe in making delivery to the holder who first produces the bill of lading, *duly endorsed*, unless he is satisfied that the circumstances are such as to justify a suspicion of such holder having come by the bill improperly, unfairly, or fraudulently. Formerly, it was held that a bill of lading was not negotiable like a bill of exchange, so as to enable the endorsee to maintain an action upon it in his own name, and that the effect of the endorsement was only to transfer the right of property in the goods, but not the contract itself for the shipment of these goods,[3] and, in a previous case, the captain had engaged, by his bill of lading, to deliver the goods for the consigner, and in his name, to the consignee, who, at the time of shipping, had no property in the goods:—in an action by the latter against the shipowners, for damage to the goods, it was held, that, though the consignee had insured the goods, and had advanced the premiums of insurance, before the arrival of the ship,—such an action must be brought in the name of the consigner.[4]

But, on the preamble that, "by the custom of merchants, a bill of lading of goods being transferable by endorsement, the *property in the goods may thereby pass* to the endorsee, but, nevertheless all right in respect *of the contract* contained in the bill of lading remains in the original shipper or owner, and that it is expedient that such rights should pass with the property, and that it frequently happens that the goods, in respect of which bills of lading purport to have been signed, have not been laden on board, and that it is proper that such bills of lading, in the hands of a *bona fide* holder for value, *should not be questioned by the*

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[1] Bradley *v.* Dunipace, 7 H. and N. 200.
[2] Gibson *v.* Sturge, 1 Jur. *n. s.* 259.
[3] Thompson *v.* Dominy, 14 M. and W. 403.
[4] Sargent *v.* Morris, 3 B. and A. 277.

master" (captain) "or other person signing the same, on the ground of the goods not having been laden,"—therefore the Bills of Lading Act, 1855, enacts, section 1,—that "every consigner of goods named in the bill of lading, and every endorsee of a bill of lading, to whom the property of the goods therein mentioned shall pass upon or by reason of such consignment or endorsement, shall have transferred to, and vested in him, all rights of suit" (action), "and be subject to the same liabilities, in respect of such goods, as if the contract contained in the bill of lading had been made with himself."

But "nothing herein contained shall prejudice or affect any right of stoppage *in transitu*, or any right to claim freight against the original shipper or owner, or any liability of the consignee or endorsee, by reason or in consequence of his being such consignee or endorsee, or of his receipt of the goods by reason or in consequence of such endorsement" (sec. 2).

"Every bill of lading, in the hands of a consignee or endorsee, for valuable consideration, representing goods to have been shipped on board a vessel, shall be conclusive evidence of such shipment against the master or other person signing the same, notwithstanding that such goods, or some part thereof, may not have been so shipped, unless such holder of the bill of lading shall have had actual notice, at the time of receiving the same, that the goods had not been, in fact, laden on board; provided that the master or other person signing the same may exonerate (free) himself, in respect of such misrepresentation, by showing that it was caused without any default (failure or omission) on his part, and either by the fraud of the shipper or of the holder, or some person under whom this holder claims" (sec. 3).

It has been held that a consigner of goods has a sufficient right of property in the goods consigned to him to support an action against the shipowner for the non-delivery of them.[1] When goods are shipped by a seller to the purchaser, in terms of bargain to that effect, and the bill of lading is specially endorsed to the purchaser, and transmitted to him,—the property of the goods is thereby transferred to him, and he is liable for the price.[2] And when the assignees of a bill of lading were, by it, to receive a cargo, paying freight according to the charter-party:—it was held, that the assignees were not liable for demurrage, though it was conditioned in the charter-party, and on the margin of the bill of lading were written these words:—"There are eight working days for unloading in London,"—there being no bargain in the bill of lading as to the payment of demurrage.[3]

The holder or endorsee of a bill of lading, for valuable consideration, is not affected by any conditions not appearing on the face of the bill itself; and if he has no notice of any circumstance to prevent him from fairly and honestly taking the endorsement,—as that the endorser is likely to fail, and not pay the price in due course,—the endorsement has the effect of vesting in him the right to demand delivery of the goods.[4] But if he knows that the endorser is insolvent, or that no bill has been accepted for the price, or that, being accepted, it is not likely to be paid;—he stands in the same situation as the consignee or endorsee.[5] When

[1] Trowson *v.* Dent, 8 E. F. Moo. 419. [2] Brown *v.* Hare, 3 H. and N. 484.
[3] Capel or Chappell *v.* Comfort, 10 Scott, *n. s.* 802.
[4] Jones *v.* Jones, 8 M. and W. 431. [5] Cuming *v.* Brown, 9 East, 506.

there is a special or conditional endorsement—as "deliverable to B., if he accept *and pay* the accompanying draft, and, if not, then to the holder of the draft"—this puts the endorsee for a valuable consideration to inquire whether or not the condition has been actually performed, and if not, he has no title to the goods.[1] And where the consigner of a cargo received the bill of lading on the day he stopped payment, and transferred it, being insolvent, to a person or persons whom he called L. & Co., and from whom, after the consignee had, on his own petition, been adjudged bankrupt, a third party professed to purchase it, and afterwards, and before the ship arrived, another firm fairly and honestly bought it from the third party; and, on the ship's arrival, the assignees in bankruptcy of the consignee took possession of the cargo:—it was held, that, as the evidence showed the whole transaction between the consignee and L. & Co. and the third party was collusive and colourable, and with the design of defrauding the creditors of the consignee, the question was, whether the third party had fairly and honestly made his purchase.[2]

When the bill of lading is taken to a named consignee, or is specially endorsed and transmitted to him, as a security for previous advances, or to indemnify him against his liabilities on account of that particular consignment,—an absolute or special property in the specified goods is vested in him, from the time of their delivery on board, and the captain is responsible to him for the safe delivery of the cargo. Thus, where goods were shipped, and bills of lading signed and transmitted to a factor, making them deliverable to him, and it was proved by correspondence that it was the intention to vest the property in the factor, in security of previous advances:—it was held, that the factor had a special property in the goods, from the time of their delivery on board, and that he could sue the captain for their non-delivery.[3] So, where the London factors of a Newcastle manufacturer had remonstrated with him on the state of his account, and he had consigned goods to them, specifically to meet a bill drawn on them, and transmitted them a receipt signed by the mate of the ship, acknowledging the goods to have been received on board, to be delivered to them:—it was held, that the appropriation of these goods was complete, and that the shipowners were liable in delivery to the factors.[4] So, where a corn merchant in Langford—who had been in the habit of consigning corn for sale to his factors in Liverpool, and obtaining their acceptances on the faith of such consignment—on 31st January obtained from the masters of two canal-boats (No. 684 and No. 54) receipts for full cargoes of oats, as on board their boats, deliverable to an agent in Dublin, "in care for, and to be shipped to," the factors in Liverpool;—at the time, boat 684 was loaded, but no oats were then on board boat 54;—on 2d February, the corn merchant forwarded these receipts to the factors, and drew a bill on them for the value, which they accepted and paid; but, some days afterwards, he gave a pressing creditor an order on the Dublin agent to deliver to that creditor both the cargoes;—boat 684 had then sailed, but boat 54 was only partially loaded, and, on their arrival in Dublin, the creditor took possession of both cargoes:—it was held, that the cargo of boat 684 had vested in the factors, and that they

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1 Barrow *v.* Coles, 3 Camp. 92.
2 Whitmore *v.* Lloyd, 2 F. and F. 36.
3 Anderson *v.* Clarke, 2 Bing. 20.
4 Evans *v.* Nicholl, 4 Scott, N. R. 43.

could maintain action for delivery of it, but that they could not maintain such action for the cargo of boat 54, since none of it was on board, nor otherwise specifically appropriated to the factors when the receipt for that boat was granted by the master.[1] And where A, residing at Manchester, bought a quantity of oak-bark from B, at Dumfries, to be paid for in cash, and to be shipped "for delivery at Liverpool;" and a bill of lading deliverable to A, or assigns, and a draft for the price, payable on demand, were sent to Manchester bankers, to present the draft for acceptance:—the bark was accordingly shipped and delivered at Liverpool to wharfingers and carriers, to be forwarded by them to Manchester; but the Manchester bankers, being unable to find A, returned the bill of lading and draft to B, who thereupon claimed the bark, and received it from the wharfingers:—it was held, that, under the circumstances, the property in the bark had not passed to A, and that B had right to countermand the delivery.[2]

But where, in a case already referred to, a contract was made with a mercantile firm, carrying on business in London and Odessa, for the purchase of a quantity of linseed at the latter place, to be paid for at certain dates,—and, for the amount of the price, the Odessa partner drew bills on the purchaser, which were duly accepted and paid when due; the purchaser chartered a ship which was to proceed to Odessa with an outward cargo, and there take on board, "from the agents of the freighter," the linseed, and, being so loaded, to proceed to the port of the freighter's residence, "and deliver the same to the order of the freighter, on being paid freight;"—on arrival at Odessa, the captain produced a copy of the charter-party, and applied for the linseed, which, he was informed, would be shipped in due time;—the loading of the vessel commenced, but the Odessa house not being able to procure the entire quantity of linseed, the captain agreed to receive wheat in substitute, which was shipped accordingly:—when the linseed was loaded, the Odessa partner wrote the London branch, that the bill of lading should be sent by next post;—but he afterwards procured the captain to sign bills of lading, making the goods deliverable "to order or assigns," and immediately endorsed the bills of lading to a third party for value, who transferred them to other parties:—it was held, that, under the above circumstances, there was no such delivery of the goods as to vest the right of property or possession in the purchaser.[3]

Though the shipment be made, and bills of lading taken, to a consignee by name, the shipper and owner of the goods may alter the bills of lading, or attach conditions to the shipment, at any time before the bill of lading be transmitted, or the goods delivered to the consignee named. As where a merchant in Waterford had been in the practice of consigning cargoes of grain to a corn factor in Bristol, who had been accustomed to accept bills on the faith of such consignments;—the former wrote the latter that he was about to consign to him a cargo of oats, in anticipation of which he had drawn on him, and desiring him to affect an insurance on the cargo, and this bill the factor accepted;—before the ship sailed the merchant failed, and he then sent the bill of lading, blank endorsed, to another factor

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[1] Bryans *v.* Nix, 4 M. and W. 775.
[2] Sheridan *v.* New Quay Co., 4 Scott, *n. s.* 618.
[3] Ellershaw *v.* Magniac, 6 W. H. and G. 576.

in Bristol, without informing him of his engagement with the first one;—when the ship arrived, the second factor, for his own convenience, transmitted the bill of lading to the first factor, desiring the latter to act for him;—the first factor paid the freight, and took possession of the cargo as a security for *his own* claim on the merchant, but it was taken out of his possession by others of the merchant's creditors, under a writ of attachment against him:—it was held, that the first factor had not such a property in the goods as to enable him to maintain an action for delivery of them as against these creditors.[1] And in another case, also before cited, Mackenzie, a planter in Jamaica, being owner of sugars, the produce of his estate, and being indebted to Ede, in London, for more than their value, shipped them, on 4th April, on board a ship which belonged to Ede, and which was in the practice of carrying supplies to the estates of Mackenzie and others, and of taking back consignments from these estates, and was then employed in that course;—on 6th April the captain signed and handed to Mackenzie a bill of lading, bearing the sugars to be deliverable to Ede in London, he paying freight,—and, on the same day, Mackenzie made an endorsement, that the sugars were to be delivered to Ede, *only on condition of his giving security for certain payments*,—otherwise, to the agent of one Mitchell, to whom he was indebted more than their value, and to whom, of same date, he endorsed and delivered the bill of lading, which was never in Ede's hands;—previous to the ship's sailing, Mackenzie had advised Ede that the ship would sail with the sugars in question,—directing him to insure,—and advising him of bills drawn on account of the estates producing the sugars in question; but, on 4th April, he wrote Mitchell, to secure himself for *his* balance, with the produce of the estates;—the sugars arrived in London, and Ede paid the bills drawn on him, *but did not comply with the condition of the endorsation of the bills of lading*:—it was held, that Mitchell was entitled to the sugars;—for (1.) Mackenzie had not parted with the property by the delivery on board a ship so employed as above stated; nor (2.) By accepting the bill of lading from the captain as drawn by him,—Mackenzie being entitled to change the destination of the sugars, until he had delivered them or the bill of lading; (3.) That the letters to Ede did not show an intention to consign the specific property to him; and (4.) That for these reasons (strengthened by proof of intention in the letter of 4th April), the endorsement to Mitchell passed the property.[2] But when goods are shipped "free on board" by the sellers to the purchasers, and a bill of lading, specially endorsed to the purchasers, is transmitted to them,—the property of the goods is in the latter, and they are liable for the price, though the ship be lost.[3]

When goods are shipped to the order, and "on account and risk," of the consignee or purchaser, to be paid for by bills to be drawn and accepted for the amount, and not to be delivered until such bills are accepted—the property of the goods does not vest in the latter;—and, in such case, it is likely the captain will be required to sign bills of lading, deliverable to the shipper's own order, by whom one part, *unendorsed*, is transmitted to the consignee or purchaser, to notify the shipment,—and

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[1] Bruce *v.* Wait, 3 M. and W. 15. [2] Mitchell *v.* Ede, 11 A. and E. 888.
[3] Brown *v.* Hare, H. and N. 484.

another part, *endorsed*, is sent to the consigner's own agent, to be delivered when the bills are accepted. In this case, therefore, the captain ought not to deliver the goods, unless to the holder of a bill of lading specially endorsed, as has been seen in Brandt *v.* Bowlby, before detailed (p. 211). But if goods are shipped on the order of a merchant, by parties abroad indebted to him, and on board his own ship,—the shippers, at the time, telling the captain that they belong to him,—and they advise the merchant that they have shipped the goods for his account and risk, and send him invoices, in which they charge him a commission on the amount, but they induce the captain to sign bills of lading blank in the consignee's name, on the assurance that it was immaterial, as they were to be delivered to his owner, and one of these they forward to their own agent in this country, with bills for the amount, which the merchant refuses to accept, and, in consequence, the agent endorses the bill of lading to a third party, by whom, and also by the merchant, on arrival of the ship, the goods are claimed :—in such a case, it has been held that the property vested in the merchant, and that, under the circumstances, the captain was justified in making delivery to his employer.[1]

When the holder of the endorsed bill of lading is merely the agent for the shipper, and has no other interest in the goods, the endorsement of the bill of lading to him does not pass the property; and if the master, without knowledge of an endorsed bill, has delivered them to order, or in terms of his bill of lading, the holder of the endorsed bill has no action against him for delivery. As where, on the order of a correspondent in this country, goods were shipped on account and at the risk of the consignee, to whom an invoice and *unendorsed* bill of lading were transmitted, informing him of the shipment, and that he had been drawn on for the amount; but, as a precaution, an *endorsed* bill of lading was sent by the shipper to his own agent, of which he did not inform the consignee :—it was held, that the consignee having, upon the arrival of the ship, obtained possession of the cargo, by delivery from the captain, though improperly, on the production of the *unendorsed* bill of lading, he had thereby become absolute proprietor of the goods, and that the holder of the endorsed bill of lading had no action against him for delivery of them.[2] And where goods were shipped to order, on account and risk of the consignee, and an invoice and a *blank endorsed* bill of lading were transmitted to him, and bills drawn on him for the amount; but another bill of lading was sent by the shipper to his own agent, under which he obtained delivery of the goods, and refused to give them up, *unless upon immediate payment;* the consignee offered to accept the bills, as drawn at three months, and this being refused, he brought an action against the agent for delivery of the goods :—and it was held, that, by delivery of the goods to the captain, *on account and at the risk of the consignee*, and by transmission of the invoice and bill of lading to him, the property had passed to him, and that he was entitled to the goods, under condition of acceptance of the bills.[3]

When goods are shipped in name of the consigner, to be delivered to a factor, or agent, or broker, who has himself no property in the goods, and

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[1] Ogle *v.* Atkinson, 5 Taunt. 759. [2] Cox *v.* Harden, 4 East, 211.
[3] Walley *v.* Montgomery, 3 East, 585.

the captain refuses to deliver them to him *as such*, he cannot bring an action in his own name for delivery of the goods, or for any damage they may have sustained; but such action must be in the name of the consigner. As where, by bill of lading, the captain was to deliver the goods to the consigners, and, in their name to the consignee, who had no property in the goods: it was held that an action against the shipowners for damage done to the goods must be brought in name of the consigners, although the consignee had insured the goods, and advanced the premiums of insurance, before the arrival of the ship.[1] But on the insolvency of the consignee, the consigner can endorse the bill of lading to his agent, without value, in order to enable the agent to stop the goods *in transitu*.[2] See *post*, STOPPAGE IN TRANSITU.

If goods are consigned to a factor or agent, and the bill of lading is in his name, he can endorse the bill of lading for a valuable consideration, so as effectually to transfer the property of the goods; or he can pledge the bill of lading for advances, either original or continued, provided the person honestly advancing the money has no notice that the agent is thus acting fraudulently or without authority; but mere notice that the agent is not the owner will not affect the validity of the transaction.[3]

In general, the captain cannot be wrong, nor incur responsibility, in adhering strictly to his engagement with the shipper, and in delivering to the party who produces a bill of lading *duly endorsed*, unless he has notice of his insolvency, or from the shipper, or some party acting for him, not to deliver the goods. In such a case, or where several parties claim the goods, or where there is a doubt as to the person entitled to delivery of them, the captain should lodge the goods in a customs warehouse (if duties are payable), or in the custody of a wharfinger or warehouseman, so as to preserve his lien for the freight; and he should do the same if no such bill of lading is produced to him during the lay-days, or the demurrage-days, when they are fixed; and then he should apply for judicial authority to sell as much of the goods as will pay the duties and the freights and charges.

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[1] Sargent *v.* Morris, 3 B. and A. 273. [2] Morison *v.* Gray, 2 Bing. 200.
[3] 6 Geo. IV., cap. 94, secs. 1, 2; 5 and 6 Vict., cap. 39, secs. 1–3.

IV.—DIFFERENT VOYAGES FOR SHIPS.

I.—THE COASTING TRADE, AND TRADE WITH THE ISLE OF MAN.

By section 140 of the Customs Consolidation Act, 1876, all trade by sea, from any one part of the United Kingdom to any other part thereof, is held to be a coasting trade, and all ships while employed therein are held to be coasting ships; and no part of the United Kingdom, however situated with regard to any other part thereof, is held in law, with reference to each other, to be parts beyond the seas. If any doubt at any time arise as to what, or to or from what, parts of the coast of the United Kingdom is to be held a passage by sea, the Commissioners of the Treasury can determine and direct in what cases the trade by water, from one part or place in the United Kingdom to another of the same, is, or is not, to be held a trade by sea within the meaning of the Consolidation Act, or of any Act relating to the customs.

By section 141 it is enacted, that every foreign ship proceeding, either with cargo or passengers or in ballast, on any voyage from one part of the United Kingdom to another, or from the islands of Guernsey, Jersey, Alderney, Sark, or Man, to the United Kingdom, or from the United Kingdom to any of these islands, or from any of them to any other of them, or from any one part to any other part of the same island, must be subject, as to stores for the use of the crew, and in all other respects, to the same laws, rules, and regulations, to which British ships, when so employed, are subject; but no foreign ship which is employed in the coasting trade as aforesaid, nor any goods carried in any such ship, are subject, during the time she is so employed, to any higher or other rate of dock, pier, harbour, light, pilotage, tonnage, or other dues, duties, tolls, rates, or other charges whatsoever, or to any other rules as to the employment of pilots, or any other rules or restrictions whatsoever, than British ships, employed in like manner, or goods carried in such ships,—any law, charter, special privilege, or grant to the contrary notwithstanding.

No goods can be carried in any coasting ship, unless such as are laden, to be so carried, at some port or place in the United Kingdom, and no goods must be laden on board any ship to be carried coastwise, until all goods brought in such ship, from parts beyond the seas, have been unladen; and if any goods are taken into or put out of any coasting ship at sea or over the sea, or if any coasting ship touch at any place over the sea or deviate from her voyage, unless forced by unavoidable circumstances, or if the captain of any coasting ship which has touched at any place over the sea does not declare the same in writing, under his hand, to the collector or other proper officer at the port in the United Kingdom where the ship first afterwards arrives, the captain forfeits £100.[1] And if any goods are unshipped from any ship arriving coastwise, or are shipped, or water-borne to be shipped, to be carried coastwise, on Sundays or holidays, or unless in the presence or with the authority of the proper customs officer, or unless at such times and

[1] Sec. 142.

places as are appointed or approved by him for that purpose, the same are forfeited, and the captain forfeits £50.[1]

The captain must keep, or cause to be kept, a cargo-book, stating the names of the ship, the master, and the port to which she belongs, and the port to which she is bound on each voyage; and at every port of lading, he must enter in this book the name of that port, and an account of all goods taken on board, stating the descriptions of the packages, and the quantities and descriptions of the goods therein, and the quantities and descriptions of any goods stowed loose, and the names of the respective shippers and consignees, so far as these particulars are known to him; and at every port of discharge of these goods, he must also note the respective days on which the same, or any of them, are delivered out of the ship, and the respective times of departure from any port of lading, and of arrival at every port of discharge; and he must produce this cargo-book, on demand, for the inspection of any officer of customs, who is at liberty to make any note or remark therein. If, upon examination, any package, entered in the cargo-book as containing foreign goods, is found not to contain such goods, that package with its contents is forfeited; or if any package is found to contain foreign goods *not* entered in the cargo-book, such goods are forfeited; and if the captain fails correctly to keep this cargo-book, or to produce the same, or if at any time there is found on board the ship any goods not entered in this book as laden, or any goods noted as delivered, or if any goods entered as laden, or any goods not noted as delivered, are not on board, the captain forfeits £20.[2]

Before any coasting ship can depart from the port of lading, an account, with a duplicate thereof, in the form given in the Act, and signed by the master, must be delivered to the collector or other proper officer, and the collector or comptroller retains the duplicate, and returns the original account dated and signed by him. This account is the clearance of the ship for the voyage, and the transire or pass for the goods expressed therein; and if such account be false, the captain forfeits £20. But whenever it appears expedient to them, the Commissioners of Customs can permit general transires to be given, under such regulations as they direct, for the lading and clearance, and for the entry and unlading, of any coasting ship and goods, and can revoke the same by notice in writing, under the hand of the proper officer, delivered to the captain, or owner, or any of the crew on board.[3]

Within twenty-four hours after the arrival of any coasting ship at the port of discharge, and before any goods are unladen, the transire, with the name of the place or wharf where the lading is to be discharged noted thereon, must be delivered to the collector or other proper officer, who notes thereon the date of delivery; and if any goods on board are subject to any duty of excise, the same must not be unladen without the authority or permission of the proper officer of excise. If any goods on board any coasting ship, arriving in Great Britain or Ireland from the Isle of Man, are the growth or produce of that isle, or the manufacture of that isle, from materials the growth or produce thereof, or from materials not subject to duty in Great Britain or Ireland, the same must

[1] Sec. 143. [2] Sec. 144. [3] Sec 145.

not be unladen until a certificate is produced to the collector or other proper officer, from the collector or other proper officer at the port of shipment, that proof had there been made, in manner required by law, that these goods were of such growth, produce, or manufacture, as the case may be. If any goods are unladen contrary to this enactment, the captain forfeits £20; and if any goods are laden on board any ship, in any port or place in the United Kingdom, and carried coastwise, or having been brought coastwise, are unladen in any such port or place contrary to the Customs Consolidation Act, or any other Act relating to the customs, these goods are forfeited.[1]

Any officer of the customs can go on board any coasting ship in any port or place in the United Kingdom, or at any period of her voyage, search the ship, and examine all goods on board, and all goods then lading or unlading, and demand all documents which should be on board such ship; and can order all or any such documents to be brought to him for inspection; and the captain refusing to produce such documents on demand, or to bring the same to the collector or comptroller when required, forfeits and pays £20.[2]

If the master of any ship, bringing any goods not liable to duty coastwise, from one port of the United Kingdom to another, desire to proceed with such goods, or any part of them, to parts beyond the seas, he may, subject to such regulations as the Commissioners of Customs may see fit, enter such ship and goods outwards for the intended voyage without first landing the same.[3]

The Isle of Man is taken and deemed to be part of the United Kingdom, for all the purposes of the Customs Acts; but nothing prejudices or affects, or can be construed in any way, directly or indirectly, to prejudice or affect, any of the rights or privileges legally exercised or enjoyed in that isle.[4]

No foreign goods, upon which a higher duty is payable on their importation into Great Britain or Ireland than on their importation into the Isle of Man, must, after having been cleared and delivered out of charge of the proper officer of customs, for consumption or otherwise in that isle, be carried, or shipped, or water-borne, or brought to any quay, wharf, or other place to be shipped, or water-borne, to be carried from the Isle of Man into Great Britain or Ireland; nor must any such goods, which may be brought to the Isle of Man, though not cleared or delivered as aforesaid, be removed or carried from thence into Great Britain or Ireland, until the same have been duly cleared for that purpose by the proper officer of customs,—nor (unless reported for removal in the same ship, and in continuation of the voyage to some port in Great Britain or Ireland) until sufficient security, by bond or otherwise, has been given, in such manner and on such terms and conditions as the Commissioners of Customs direct, for the due delivery thereof at some port or place in Great Britain or Ireland. All goods carried, brought, shipped, removed, or water-borne, to be shipped, removed, or carried, contrary to this enactment, are forfeited,—and every person who carries, ships, brings, removes, or water-bears, to be shipped, removed, or carried, any goods contrary to this enactment, or who aids, or is concerned therein, forfeits treble the

[1] Sec. 146. [2] Sec. 147. [3] Sec. 148. [4] Sec. 277.

value of the goods, or the sum of £100, at the election of the Commissioners.[1]

Any goods, the growth of the Isle of Man, or manufactured there from materials the growth of that isle,—or from materials not subject to duties in Great Britain or Ireland,—or from materials upon which the duty has been paid in Great Britain or Ireland, and upon which no drawback has been subsequently paid,—can be brought from the Isle of Man into Great Britain or Ireland without payment of any duty. But such goods may, nevertheless, be charged with such proportion of such duties as will fairly countervail any duties of excise payable on the like sort of goods, the produce of that part of the United Kingdom into which they are brought; and any articles, either wholly or in part manufactured in the Isle of Man, from any materials upon which a higher duty is payable upon their importation into the United Kingdom than on their importation into the Isle of Man, can be brought from that isle into Great Britain or Ireland on payment of the duty payable on such goods in that part of the United Kingdom into which they are so brought.[2]

Before any goods can be shipped from the Isle of Man, to be carried to Great Britain or Ireland, as the growth or produce of that isle, or as manufactures of that isle from materials the growth or produce thereof, or from materials not subject to duty in Great Britain or Ireland, or from materials upon which the duties have been paid, and not drawn back, in Great Britain or Ireland, proof must be made by the written declaration of some competent person, to the satisfaction of the collector or comptroller of the customs at the port of shipment, that such goods (describing and identifying them) are of the growth, produce, or manufacture (as the case may be) of the Isle of Man; and in this declaration must be stated the name of the person by whom such goods are intended to be shipped, and that person at the time of shipping (not being more than one month after the date of the declaration) must make and subscribe a declaration before the same collector or comptroller, that the goods to be shipped are the same as are mentioned in the first declaration, and thereupon the collector or comptroller gives, on demand, to the captain of the ship in which the goods are to be exported, a certificate of such proof of produce or manufacture, describing the same, and setting forth the name of the party, of the ship, and of the captain thereof, and the destination of the goods.[3]

Nothing contained in the Customs Consolidation Act can be deemed or construed to affect the laws and regulations in force respecting duties and drawbacks of excise on goods removed to the Isle of Man.[4]

If any ship or boat, bound from the Isle of Man to Great Britain or Ireland, has on board any stores of spirits, tobacco, or tea, for the use of the crew, exceeding the stated quantities following, these stores, with the casks or packages containing the same, and also the ship or boat, are forfeited, viz.:—Spirits, for each seaman in ships or decked vessels, half a gallon; in boats, one quart. Tobacco, for each seaman in the former, one pound; in the latter, half a pound. Tea, for the whole crew in the former, two pounds; in the latter, one pound.[5]

The Commissioners of the Treasury may, at any time, by order under their hands, restrict or limit the importation into the Isle of Man of any

[1] Sec. 278. [2] Sec. 279. [3] Sec. 280. [4] Sec. 281. [5] Sec. 282.

foreign goods to such quantities per annum, and in such manner, as they deem necessary, and can also determine into what ports in the Isle of Man, and from what places, such goods may be imported.[1]

II.—THE FOREIGN TRADE.

1.—*Exportation.*

By the Customs Consolidation Act, 1876, 39 and 40 Vict., cap. 36, it is enacted, that no person must export any warehoused goods, or goods liable to duties of customs transhipped, or goods entitled to drawback on exportation, nor shall enter any such goods for exportation from the United Kingdom to parts beyond the seas in any ship of less burden than forty tons.[2] And before any goods are taken on board, the captain of every ship in which goods are to be exported from the United Kingdom to parts beyond the seas, must deliver to the collector or comptroller a certificate from the proper officer of the due clearance inwards or coastwise of the ship of her last voyage, and must also deliver therewith an entry outwards of his ship, verified by his signature, in the form given in the Act, and containing the several particulars indicated or required thereby. If the ship has commenced loading at some other port, the captain must deliver to the proper officer the clearance of these goods from that other port; and if any goods are taken on board any ship at any port before she has been entered outwards at that port (unless, when necessary, a stiffening order is issued by the proper officer, to load any heavy goods for exportation), the captain forfeits the sum of £100.[3]

No warehoused or drawback goods must be shipped, put off, or water-borne to be shipped for exportation, from any port or place in the United Kingdom, on Sundays or public holidays,—nor from any place, except some legal quay, wharf, or other place duly appointed for that purpose,—nor without the presence or authority of the proper officer of customs,—nor before due entry outwards of the ship, and due entry of the goods,—nor before the goods have been duly cleared for shipment; and any goods shipped, put off, or water-borne to be shipped, contrary to this section, are forfeited,—and the officer is empowered to open, or cause to be opened, and to examine, all goods shipped or brought for shipment at any place in the United Kingdom; and the opening of packages containing such goods (for this purpose), and the weighing, repacking, landing, and reshipment of such goods, is done by or at the expense of the exporter.[4]

If any British or Irish spirits are exported from Great Britain or Ireland to parts beyond the seas, or be removed to the Isle of Man, or be brought to Great Britain or Ireland, or to any wharf, quay, or other place, or water-borne for that purpose, in casks containing less than nine gallons each of such spirits, the same is liable to forfeiture.[5]

In respect to the entry and clearance of goods for exportation, it is enacted, that before any warehoused goods, British-wrought plate, goods subject to duties of customs, or entitled to any drawback of customs on exportation, or exportable only under particular rules, regulations, or re-

[1] Sec. 283. [2] Sec. 100. [3] Sec. 101. [4] Sec. 102. [5] Sec. 103.

strictions, are permitted to be exported,—the exporter or his agent must deliver to the collector or other proper officer a bond-note, or account of the goods, and give such security by bond as the Commissioners of Customs may require, that these goods shall be duly shipped and exported, and landed at the place for which they are entered outwards, or otherwise accounted for to the satisfaction of the Commissioners of Customs. This bond-note, when certified by the proper officer, is the export entry for such goods.[1]

Before any such goods can be shipped, or water-borne to be shipped, for exportation, the exporter or his agent must deliver to the proper officer a shipping bill of the goods, in the form given in the Act, and containing the particulars indicated therein or required thereby.[2]

If any goods upon which any drawback is claimed or allowed be shipped or brought to any quay, wharf, or other place to be shipped for exportation, be found, on examination, not to agree with the entry in the shipping bill for allowance of drawback on shipment, or be found to be of less value for home use than the amount of the drawback claimed, the goods and packages will be forfeited; and the person entering such goods and claiming the drawback thereon forfeits £100, or treble the amount of the drawback claimed, at the election of the Commissioners of Customs.[3]

No drawback of excise is allowed upon any goods cleared for exportation, unless the person intending to claim the drawback has given notice to the officers of excise, and has produced to the proper officer, at the time of clearing the goods, a proper document under the hand of the officer of excise, containing the description of the goods; and if such goods are found to correspond with the particulars of the goods contained in that document, and are duly shipped and exported, the officer of customs, if required, certifies such shipment upon that document, and transmits the same to the officer of excise.[4] And no drawback is allowed on any tobacco not wholly manufactured from tobacco on which the duty on importation has been paid, nor on any tobacco mixed with dirt, rubbish, or other substance, except as provided by the Manufactured Tobacco Act, 1863; and every person who enters or ships, or causes to be entered or shipped, any tobacco contrary to this section, forfeits, over and above all other penalties he may thereby incur, treble the amount of the drawback sought to be obtained, or £200, at the election of the Commissioners; and all such tobacco is forfeited.[5]

The exporter of goods for which no bond is required must, within six days after the final clearance outwards of the exporting ship, or within such other period as the Commissioners of Customs may direct, either by himself or his agent, deliver to the proper officer of customs at the port of shipment a specification in one of the two forms in the Schedule to the Act, according to the nature of the goods, and containing the several particulars indicated in or required thereby, or in such other form and manner as the Commissioners of Customs may direct; and must subscribe the declaration; and on demand of the proper officer of customs, must produce the invoice, bills of lading, and other documents relating to the goods, to test the accuracy of such specification: and on failure to comply with any of these requirements, the exporter or agent forfeits £5.[6]

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[1] Sec. 104. [2] Sec. 105. [3] Sec. 106. [4] Sec. 107. [5] Sec. 108. [6] Sec. 110.

The master or owner of every ship in which any goods are exported, must, by himself or his agent, within six days of the final clearance of such ship, deliver to the proper officer of customs a certificate, if the ship be a steamer trading to a foreign port, of the quantity of coals or fuel shipped for use on the voyage, and a manifest of all the goods shipped, containing the marks and numbers, and the number and description of the packages, with the names of the consigners, according to the bills of lading relating thereto; and must make and subscribe a declaration that such manifest contains a true account of all the cargo of such ship, unless a specification comprising all the particulars hereinbefore required to be given be delivered to the proper officer of customs, with a like declaration that the same contains a true account of the whole cargo of the ship; and the master, owner, or agent acting herein, and subscribing the declaration, on failure to comply with any of these provisions forfeits £5.[1] And if any exporter of goods, who may have delivered a specification thereof for exportation in any ship, fails, in case the goods or any of them are not duly shipped, to attend the proper officer of customs within six days after the final clearance outwards of such ship and correct such specification, he forfeits £5.[2]

The shipping bill or bills, when filled up and signed by the exporter or his agent, or by the consignee of the ship (as the case may be), in such manner as the proper officer requires, and countersigned by him, is the clearance for all the goods enumerated therein; and if any of such goods consist of transhipment goods, the exporter, or his agent, must furnish to the officer an account thereof, containing the number and description of the packages, and the respective quantities contained therein, which, when certified by the officer, must accompany the ship. If the exporter, or his agent, require a similar certificate in respect of any other goods shipped for exportation, the officer must, on its being presented to him for that purpose, certify the same in like manner.[3]

If any goods cleared for drawback, or from the warehouse, are carried or water-borne to be put on board ship for exportation, by any person not at the time duly licensed and authorised to act as a lighterman, either in the Port of London or any other port at which lightermen require to be so licensed, or by any person not being in the employment of a lighterman, at the time duly authorised to act as such, every such person forfeits, for every such offence, the sum of £20.[4]

And if any goods, taken from the warehouse for removal or for exportation, are removed or shipped, except with the authority or under the care of the proper officer of customs, and in such manner, by such persons, within such time, and by such roads or ways, as that officer permits or directs, these goods are forfeited.[5] But if any goods, duly entered for delivery from the warehouse for removal or exportation, are lost or destroyed by unavoidable accident, either in the delivery from the warehouse, or in the shipping thereof, the Commissioners may remit the duties thereon.[6]

As to the shipping of stores for the use of foreign-bound ships, it is enacted that the captain of every ship of forty tons burden or upwards, departing from any port in the United Kingdom upon a voyage to parts beyond seas, can, upon application made by him, and upon such terms and

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[1] Sec. 111. [2] Sec. 112. [3] Sec. 113. [4] Sec. 114. [5] Sec. 115. [6] Sec. 116.

conditions as the Commissioners direct, receive from the export officer an order for the shipment of such stores as may be required, and allowed by the collector or other proper officer for the use of the ship, with reference to the number of crew and passengers on board, and the probable duration of the voyage on which she is about to depart. All demands for stores must be made in such form and manner as the collector or other proper officer requires, and must be signed by the captain or owner: and the master, or his agent duly authorised by him in writing for that purpose, must deliver to the export officer the stores content, containing the particulars of such stores, and shall make out and subscribe thereon, in presence of the proper officer, a declaration that the contents thereof are true, and that all the requirements of the Merchant Shipping Acts respecting outward-bound ships have been complied with, and also an account of the stores so shipped, together with any other stores then already on board; and the latter, when signed by the export officer, and countersigned by the collector or other proper officer, is the victualling bill; and no stores must be shipped for the use of any ship, nor shall any articles taken on board any ship be deemed to be stores, except such as are borne upon such victualling bill. And if any such stores are relanded at any place in the United Kingdom (without the sanction of the proper officer of customs), the same will be forfeited, and the master and owner of the ship will each be liable to a penalty of treble the value of such stores, or £100, at the election of the Commissioners.[1]

In regard to the clearance of ships outwards, it is enacted, that if there are on board the ship any goods, part of the inward cargo, reported for exportation in the same ship,—before clearance outwards of that ship from any port in the United Kingdom, the captain must deliver to the searcher a copy of the report inward of these goods, certified by the collector or other proper officer, and if this copy is found to correspond with the goods so remaining on board, the searcher signs the same, to be filed with the certificates or shipping bills, if any, and victualling-bill of the ship.[2]

Before any ship is cleared outwards from the United Kingdom, with any goods shipped or intended to be shipped on board, the captain must deliver a content of the ship to the searcher, in the form or to the effect given in the Act, and containing the several particulars therein required, as far as the same can be known by him, and he makes and subscribes the declarations at the foot thereof, in presence of the collector or comptroller, and answers such questions as are demanded of him by the collector or comptroller concerning the ship, the cargo, and the intended voyage. Before clearance, the certificates, if any, must be delivered to the searcher, who compares the shipping bills with the content and certificates, if any, and files these certificates, copy of report inwards, if any, of goods reported for exportation in that ship, and the victualling bill, with a label attached and sealed thereto, in the form given in the Act, or to that effect. This label, when filled up and signed by the collector or comptroller, is, as to the goods comprised therein, the clearance and authority for the departure of the ship.[3]

When any ship, having been cleared at one port, proceeds to take in goods at any other port, the master, after due shipment of such goods at

[1] Sec. 126. [2] Sec. 127. [3] Sec. 128.

such other port, must deliver to the collector or other proper officer there an additional like content of the goods so shipped, and so on from port to port until final clearance outwards of the ship; and in each instance the additional certificates, if any, and other necessary documents, must be attached to the label used at the first port of departure, and be sealed in like manner.[1]

If any goods, for the exportation of which in any ship bond has been given, are not duly shipped before the departure of such ship, such goods will be forfeited unless due notice of the non-shipment thereof be given to the proper officer immediately after such departure, in order that he may certify the short shipment thereof; and if, within fourteen days after the final clearance of the ship, such goods be not re-warehoused, or re-entered for exportation under bond in some other ship, the person entering the same forfeits £5; and if any goods be unshipped without the sanction of the proper officer of customs in any part of the United Kingdom, from any ship entered outwards, such goods will be forfeited, and the master of the ship, and every person concerned in such unshipment, will forfeit £100, or treble the value of the goods so unshipped or landed.[2]

If any goods for which entry before shipment is required be shipped, put off, or water-borne to be shipped, without being duly cleared, or otherwise, contrary to the provisions of any Act relating to the customs, the same will be liable to forfeiture.[3]

If any ship having on board any goods shipped as cargo, or any goods reported inwards for exportation in such ship, or any stores liable to duty or entitled to drawback, departs from any port without being duly cleared, the master will forfeit £100.[4]

If any ship departs in ballast from the United Kingdom, for parts beyond seas, not having on board any goods except stores borne upon the victualling bill, nor any goods reported inwards for exportation in the same ship,—the collector or comptroller clears that ship in ballast; but the master must answer to the collector such questions touching her departure and destination as are demanded of him. Ships having only passengers with their baggage on board, and ships laden only with chalk or slates, are deemed to be in ballast, and if any such ship, whether laden or in ballast, departs without being so cleared, if she has any stores on board, the captain forfeits and pay £100.[5]

Any customs officer can go on board any ship, after clearance outwards, within the limits of any port in the United Kingdom, or within one league of the coast, and can demand the ship's clearance; and if the master refuses to produce the same, and to answer such questions concerning the ship's cargo and intended voyage as are demanded of him, he forfeits the sum of £5.[6]

If any customs officer places any lock, mark, or seal on any goods taken from the warehouse, without payment of duty, as stores on board a ship departing from a port in the United Kingdom, and this lock, mark, or seal be wilfully opened, altered, or broken, or if any such stores be secretly conveyed away, either while the ship remains at her first port of departure, or at any other port or place in the United Kingdom, or in her passage

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[1] Sec. 129. [2] Sec. 130. [3] Sec. 131.
[4] Sec. 132. [5] Sec. 133. [6] Sec. 134.

from one such port or place to another, before her final departure on her foreign voyage, the captain forfeits £20.[1]

If any ship, departing from any port in the United Kingdom, does not bring to at such stations as are appointed by the Commissioners, for the landing of officers, or for further examination previous to her departure, the captain forfeits £20.[2] And the time at which any goods are shipped on board any export ship is held to be the time of exportation of these goods, and the time of the last clearance of the ship is held to be the time of the departure of that ship.[3]

2.—*Importation.*

In the Customs Acts the word "importer" applies to and includes any owner or other person, for the time being, possessed of or beneficially interested in any goods, from the time of their importation till they are duly delivered out of the charge of the customs' custody or control.[4]

If any ship, coming into the United Kingdom or into the Channel Islands, does not come as quickly up to the proper place of mooring or unlading as the nature of the port allows, without touching at any other place, and, in proceeding to this proper place, does not bring to at the stations appointed by the Commissioners for ships being boarded by the customs officers,—or if, after arrival at such place, the ship removes therefrom, unless directly to some other proper place of mooring or unlading, and with the knowledge of the proper customs officer,—or if the captain of any ship, on board of which any officer is stationed, neglect or refuse to provide such officer sufficient room under the deck, in some part of the forecastle or steerage, for his bed or hammock, the captain forfeits £20.[5]

The proper officers can board any ship arriving at any port of the United Kingdom or the Channel Islands, and freely stay on board until all the goods laden therein are duly delivered, and they must have free access to every part of the ship, with power to fasten down hatchways or entrances to the hold, and to mark any goods before landing, and to lock up, seal, mark, or otherwise secure any goods on board; and if any place or any box or chest is locked, and the keys are withheld, the officers can open any such chest, box, or place, in the best manner in their power; and if any goods are found concealed on board, they are forfeited. If the officers place any lock, seal, or mark upon any goods on board, and if that lock, seal, or mark is wilfully opened, altered, or broken, before due delivery of these goods, or if any of such goods be secretly conveyed away, or if the hatchways or entrances to the hold, after having been fastened down by the officer, be opened, the captain forfeits £100. If the proper customs officer places any lock, mark, or seal, upon any stores on board any ship arriving in the United Kingdom, and this lock, mark, or seal is wilfully opened, altered, or broken, or if any such stores are secretly conveyed away, either while the ship remains in the port at which she arrives, or before she has arrived at any other port in the United Kingdom, to which she may be then about to proceed, the captain forfeits £20.[6]

If any one procures goods of one name or class to be imported concealed

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[1] Sec. 135. [2] Sec. 136. [3] Sec. 137. [4] Sec. 284. [5] Sec. 46. [6] Sec. 47.

in packages of goods of any other name or class, or procures, directly or indirectly, any package of goods to be imported or entered as of one name or class, which is discovered afterwards, before or after delivery, to contain other goods, liable to a higher rate or amount of duty than the goods for which that package was entered,—that package and all goods therein are forfeited, and for this offence every such person forfeits and pays a penalty of £100, or, at the option of the Commissioners, treble the value of the goods in that package.[1]

No goods, unless diamonds, bullion, lobsters, and fresh fish of British taking, and imported in British ships (which may be landed without report or entry), must be unshipped from any ship arriving from parts beyond the seas, or be landed or put on shore, on Sundays or holidays, nor must they be so unshipped, landed, or put on shore, on any other days, unless between the hours of eight o'clock in the morning and four o'clock in the afternoon, from the 1st of March until the 1st of November, and between the hours of nine o'clock in the morning and four o'clock in the afternoon, from the 1st of November until the 1st of March, or during such other hours as may be appointed by the Commissioners; nor must any goods be unshipped or landed, unless in the presence, or with the authority, of the proper officer of the customs; nor must they be so landed, unless at some legal quay, wharf, or other place duly appointed for the landing of goods; nor, after having been unshipped, or put into any boat or craft to be landed, must any such goods be transhipped, or removed into any other boat or craft previously to their being landed, without the permission of the proper officer. If any such goods are unshipped, landed, or transhipped, or removed, contrary to this enactment, the same are forfeited; and if any goods are unshipped or removed from any importing ship, for the purpose of being landed after due entry thereof, these goods must be forthwith removed to and landed at the wharf, quay, or other place, at which the same are intended to be landed; and if not so removed and landed, the same are forfeited, together with the barge, lighter, boat, or other vessel employed in removing the same.[2]

The captain of every ship, whether laden or in ballast, within twenty-four hours after arrival from parts beyond the sea, and before bulk is broken, must make due report of his ship in the form given in the Act, and containing the several particulars indicated or required thereby.[3] If the captain wilfully fail to make such report, according to the particulars set forth in the Act, so far as the same are applicable to the ship, cargo, and voyage, or if the particulars, or any of them, contained in the report, are false, he forfeits £100. And goods not duly reported can be detained by any customs officer until they are duly reported, and the reason of their having been omitted explained to the Commissioners' satisfaction, and may in the meantime be removed to the Queen's warehouse.[4]

At the time of making this report, the captain must answer all such questions relating to the ship, cargo, crew, or voyage, as may be put to him by the collector or other proper officer. In case of failure or refusal to answer such questions, or to answer truly, or if, after the arrival of the ship within four leagues of the coast of the United Kingdom, bulk is broken, or any alteration is made in the stowage of the cargo so as to

[1] Sec. 67. [2] Sec. 48. [3] Sec. 50. [4] Sec. 51.

facilitate the unlading of any part thereof, or if any part is staved, destroyed, or thrown overboard, or any package opened, unless accounted for to the satisfaction of the Commissioners,—in every such case, the captain forfeits £100.[1]

If the contents of any package intended for exportation in the same ship are reported by the captain as being unknown to him, the officers can open and examine that package on board, or bring the same to the Queen's warehouse for that purpose; and if there is found in that package any goods prohibited to be imported, these goods are forfeited, unless the Commissioners permit them to be exported.[2]

The proper officer can permit any surplus stores, not being merchandise, nor by him deemed excessive, to be entered for private use, subject to the same rules and regulations as the like sort of goods would be subject to on importation as merchandise, or can permit any surplus stores to be entered and warehoused for future use as ship's stores, though the same could not be legally imported by way of merchandise.[3]

If, within fourteen days (not including Sundays and holidays) after the arrival of the importing ship, the importer of any goods does not make perfect entry, or entry by bill of sight of these goods, or if, having made this entry, he does not land these goods within said fourteen days, or within any further period the Commissioners may direct,—the customs officers may convey these goods to the Queen's warehouse, and if the goods are not cleared within three months, or any further time that may be allowed, and all charges of removal, freight, and warehouse rent paid, they are to be sold, and the customs officer having the charge or custody of such goods is authorised and empowered to refuse delivery thereof, until proof be given to his satisfaction that the freight due for them has been paid.[4]

Any goods the growth of the Channel Islands, and any goods manufactured in these islands from materials the growth of the same, or from materials not liable to duty in the United Kingdom, or from materials upon which the duty has been paid in the United Kingdom, and upon which no drawback has subsequently been granted, can be imported into these islands respectively without payment of any duty; and these goods are not included in any charge of duties imposed by any Act on the importation of goods generally from parts beyond the seas. But such goods are charged with any proportion of such duties as will fairly countervail any excise duties payable on the like goods, the produce or manufacture of the part of the United Kingdom into which they are imported, or upon any of the materials from which such goods are manufactured; and all goods manufactured in any of these islands, from any other materials than the materials aforesaid, are declared and taken to be foreign goods. And before any goods can be entered as being the produce of these islands, the captain of the ship importing the same must deliver to the collector or comptroller a certificate from the governor, lieutenant-governor, or commander-in-chief of the island from whence these goods were imported, that proof has been made, in manner required by law, that these goods were the produce of that island,—stating the quantity and quality of the goods, and the number and denomination of the packages containing the same.[5]

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[1] Sec. 53. [2] Sec. 54. [3] Sec. 68. [4] Sec. 73. [5] Sec. 156.

Within ten days after the landing of any bullion or coin imported into Great Britain or Ireland, the owner or consignee thereof must deliver to the collector or other proper officer of customs a full and true account of that bullion or coin, and if said account is not thus delivered, the importer, owner, or consignee forfeits £20; but this penalty does not attach to small parcels of bullion or coin imported as part of the baggage of passengers.[1]

The following goods may not be imported or brought into the United Kingdom under pain of forfeiture:—(1.) Books wherein the copyright subsists in the United Kingdom, and printed in any other country; (2.) false money; (3.) extracts of coffee, chicory, tea, or tobacco, except in transit or to be warehoused for exportation only; (4.) indecent or obscene prints or other indecent articles; (5.) snuff work; (6.) tobacco stalks and tobacco-stalk flour; (7.) articles of foreign manufacture, and any packages of such articles, bearing any names, brand, or mark of manufacturers resident in the United Kingdom, or any name, brand, or mark which states or implies that such articles were manufactured at any place in the United Kingdom; (8.) clocks and watches, or any other article of metal impressed with any mark or stamp representing or in imitation of any legal British assay, mark, or stamp; (9.) infected cattle, sheep, or other animals, or the carcasses thereof, and hides, skins, horns, hoofs, or any other part of cattle or other animals, which the Privy Council may by order prohibit, in order to prevent the dissemination of any contagious distemper; (10.) spirits (not being cordials or perfumed or medicinal spirits), unless in ships of forty tons burden at least, and in casks or other vessels capable of containing liquids, each of such casks or other vessels being of the size or content of twenty gallons at least, and duly reported, or unless in glass or stone bottles, properly packed in cases, and forming part of the cargo of the importing ship, and duly reported; (11.) tobacco, cigars, cigarillos, or cigarettes, and snuff, unless into ports approved by the Commissioners of Customs, nor unless in ships of not less than 120 tons burden, nor unless in whole and complete packages, each containing not less than eighty pounds nett weight; (12.) tobacco, sweetened (whether manufactured or unmanufactured), except as otherwise specially provided for by the Customs Acts; (13.) wine, except into such ports as may be approved for the importation thereof by the Commissioners of Customs.[2]

III.—TRADE WITH BRITISH POSSESSIONS ABROAD AND CHANNEL ISLANDS.

The powers and authorities vested in the Commissioners of Customs with regard to any act or thing relating to the customs, or to trade or navigation in any of the British possessions abroad, are vested in the Governor or other person administering the government in any such possession.[3]

Base or counterfeit coin is absolutely prohibited to be imported into the British possessions in America and the Mauritius.[4]

The Customs Acts extend to British possessions abroad, except where otherwise expressly provided by the Acts, or limited by express reference

[1] Sec. 49. [2] Sec. 42. [3] Sec. 149. [4] Sec. 150.

to the United Kingdom or the Channel Islands, and except where the possession may, by local Act, have made provisions of its own for the management and regulation of the customs.[1]

Books wherein the copyright subsists in the United Kingdom and printed in any other country, and articles of foreign manufacture, and packages of such articles, bearing any names, brands, or marks, being or purporting to be the names, brands, or marks of manufacturers resident in the United Kingdom, may not be imported into British possessions under pain of forfeiture.[2]

The captain of every ship bound from any British possession abroad (unless the territories subject to the government of the Presidencies of Bengal, Madras, and Bombay), must deliver to the proper officer of customs an entry outwards, under his hand, of such ship, and must also subscribe and deliver to that officer a content of the cargo of the ship (if any), or state that she is in ballast, as the case may be, and answer such questions concerning the ship, cargo (if any), and voyage, as are demanded of him, in the same manner, as nearly as may be, as on the entry and departure of any ship from the United Kingdom; and thereupon the proper officer gives to the captain a certificate of the clearance of the ship for her intended voyage; and if any ship depart without this clearance, or if the captain delivers a false content, or does not truly answer the questions demanded of him, he forfeits £50.[3]

The officers of customs can go on board any ship, in any port in any British possession in America, and rummage and search the ship for prohibited goods, and if there are any goods on board prohibited to be imported into such possession, these are forfeited.[4]

All vessels, boats, and other things, which have been or may be seized as forfeited in or near any of the British possessions abroad, under the Customs Consolidation Act, or any Act relating to the customs, are deemed and taken to be condemned, and are dealt with in the manner directed by law in respect to vessels, boats, goods, and other things seized and condemned for breach of any such Act, unless the person from whom such vessel, &c., has been seized, or the owner thereof, or some person authorised by him, give notice in writing, within one month from the day of seizure, to the person or persons seizing the same, or to the chief officer of customs at the nearest port, that he claims the vessel, &c., or intends to claim them.[5] And if any goods or ship or vessel be seized as forfeited, and detained in any of the British possessions in America, the judge or judges of any court having jurisdiction to try and determine such seizure can, with consent of the chief officer of customs, order the delivery thereof, on security by bond, with two sureties first approved by that officer, to answer double the value of the same, in case of condemnation. This bond is taken to the use of Her Majesty, in the name, and is delivered and kept in the custody, of the officer of customs, in whose custody the goods or ship or vessel may be lodged; and in case the goods or the ship or vessel be condemned, the value thereof must be paid into the hands of the collector or officer, who thereupon cancels the bond.[6]

The master of every ship arriving in the Channel Islands, whether laden

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1 Sec. 151. 2 Secs. 152, 153. 3 16 and 17 Vict., cap. 107, sec. 165.
4 16 and 17 Vict., cap. 107, sec. 181. 5 Sec. 182. 6 Sec. 185.

or in ballast, must come directly, and before bulk is broken, to the custom-house for the port or district where he arrives, and make a report in writing to the proper officer, in the same form and manner as provided on the arrival of a ship in Great Britain or Ireland from parts beyond the seas; and if any goods be unladen before the report is made, or if the master fail to make such report, or make an untrue report, or does not truly answer the questions put to him, he forfeits £50; and if any goods are not reported, they are forfeited.[1]

No goods must be laden or water-borne to be laden on board any ship, or unladen from any ship, in the Channel Islands, until due entry has been made of such goods, and warrant granted for the lading or unlading of the same; and no goods are to be so laden or water-borne, or so unladen, in the Channel Islands, except at some place at which an officer of the customs is appointed to attend the lading and unlading of goods, or at some place for which a sufferance has been granted by the proper officer of customs for the lading and unlading of such goods, and in the presence or with the permission of such officer. But the Commissioners of Customs may make regulations for carrying goods coastwise.[2]

As to the provisions of section 156 of the Act, see *ante*, p. 236.

If, in the Channel Islands, any goods of which the importation into the United Kingdom is prohibited, or any goods in any packages, or in any manner in which the same cannot be legally imported into the United Kingdom, be found concealed or prepared for shipment, or be shipped, removed, or brought to any wharf, quay, or other place in the said islands, or be water-borne to be shipped on board any ship, without the authority of the proper officer of customs, they will be forfeited, and the person offending forfeits £100, or treble the value of the goods, at the election of the customs officer.[3]

No ship or boat, belonging wholly or in part to Her Majesty's subjects, may sail from the Channel Islands without a clearance, whether in ballast or having a cargo; and if with cargo, the master must give a bond in double the value of the cargo for the due landing thereof at the port for which the ship clears, and must truly answer the questions which may be put to him; and every such ship not having such clearance, or which, having a clearance for her cargo, is found light, or to have discharged any part of her cargo before her arrival at the port or place of discharge specified in the clearance, will be forfeited; and the master of every ship departing without clearance, or refusing to answer, or not answering truly, any such questions, or discharging any part of the cargo before arrival at her destination, forfeits £50.[4]

The Commissioners of Customs from time to time establish regulations as to the quantities of tobacco, spirits, and tea to be used as stores by the master, crew, and passengers of any vessel about to depart from the Channel Islands to the United Kingdom, or to any fishing grounds at sea; and if the regulations be violated, the goods will be forfeited, and the master incurs a penalty of £20.[5]

No spirits (unless rum of the British possessions) can be imported into or exported from the Channel Islands, or any of them, or removed from

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[1] 39 and 40 Vict., cap. 36, sec. 154. [2] Sec. 155. [3] Sec. 157.
[4] Sec. 158. [5] Sec. 159.

any one to any other of the said islands, or carried coastwise from any one to any other part of any one of said islands, or shipped in order to be so removed or carried, in any ship of less burden than forty tons, or in any cask or other vessel capable of containing liquids, not being of the size or content of twenty gallons at the least if foreign, or nine gallons if British or Irish; and all spirits imported, exported, removed, carried, shipped, or water-borne to be so shipped, removed, or carried, contrary to this enactment, are forfeited, with the ship and any boat importing, exporting, removing, or carrying the same. But this does not extend to spirits imported in glass bottles, as part of the cargo,—nor to any spirits really intended for the consumption of the seamen and passengers during their voyage, and not being more in quantity than is necessary for that purpose,—nor to any boat of less burden than ten tons, for having on board, at any one time, any foreign spirits of the quantity of ten gallons or under,—such boat having a licence from the proper officer of customs at Guernsey or Jersey, for the purpose of being employed in carrying commodities for the supply of the island of Sark; which licence that officer grants without fee or reward. But if any such boat has on board, at any one time, any greater quantity of spirits than ten gallons, unless in casks of the size and content of twenty gallons at the least, both the spirits and boat are forfeited.[1]

No tobacco, cigars, or snuff can be imported into the Channel Islands, nor carried from one to another of these islands, or from one part to another of the same island, unless in ships of not less than forty tons, and in packages of not less than eighty pounds nett weight, nor unless the provisions in and under which the like sort of goods can be legally imported into the United Kingdom are complied with. All tobacco, cigars, or snuff imported into the Channel Islands, or carried, shipped, or removed, contrary to this enactment, or which are found to have been on board any ship or boat within one league of the coasts thereof, are forfeited, together with the ship or boat.[2]

IV.—INTERCHANGE OF TRADE WITH FOREIGN STATES.

By the Customs Consolidation Act, 1853, is regulated the trade between this country and foreign countries; and if it appears to Her Majesty that British vessels are subject, in any foreign country, to any prohibitions or restrictions as to the voyages in which they may engage, or as to the articles which they may import into or export from such countries, if Her Majesty think fit, she may, by Order in Council, impose such prohibitions or restrictions upon the ships of such foreign country, either as to the voyages in which they may engage, or as to the articles which they may import into or export from any part of the United Kingdom, or of any British possession in any part of the world, as Her Majesty may think fit, so as to place the ships of such country on, as nearly as possible, the same state in British ports as that on which British ships are placed in the ports of such country.[3]

If it appears to Her Majesty that, in any foreign country, British ships are liable, directly or indirectly, to any duties or charges of any sort or kind whatever, from which the national vessels of such country are free,

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[1] Sec. 162. [2] Sec. 163. [3] 16 and 17 Vict., cap. 107, sec. 324.

or that any duties are imposed upon articles imported or exported in British ships, which are not equally imposed upon the like articles imported or exported in national vessels, or that any preference, directly or indirectly, is shown to national vessels over British vessels,—or to articles imported or exported in national vessels, over the like articles imported or exported in British vessels,—or that British trade and navigation is not placed by such country upon as advantageous a footing (position) as the trade and navigation of the most favoured nation,—Her Majesty, if she think fit, can impose such duty or duties of tonnage upon the ships of such nation, entering into or departing from the ports of the United Kingdom, or of any British possession in any part of the world, or such duty or duties on all goods, or on any specified classes of goods, imported or exported in the ships of such nation, as may appear to countervail (to be equivalent to) the disadvantages to which British trade or navigation is so subjected.[1]

If Her Majesty think fit, every such order may particularise what ships are to be considered as ships of the country or countries to which such order applies, and all ships answering that description shall be held to be ships of such country or countries, for the purposes of that order.[2]

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[1] Sec. 325. [2] Sec. 326.

V.—ACCIDENTS AND INCIDENTS ON VOYAGES.

I.—STRANDING.

The term *stranding*, though more properly a matter belonging to insurance, yet, as applied to shipping, requires to be considered here, as an event that may occur in the course of a voyage; and stranding comprehends both the running of a ship on shore, and a ship being driven on a rock, sandbank, or beach, and continuing stuck there. This inquiry, therefore, divides into the two heads—1. What is held to be voluntary stranding? and, 2. What is an involuntary stranding?

1.—*Voluntary Stranding.*

When a ship is voluntarily and designedly run on shore, in order to avoid foundering or being wrecked, or to escape being captured, or from an enemy,—this is a stranding; and any consequent loss has to be made good by a general average.[1] Thus far the matter is plain and equitable; but a doubt has been mooted,—if, in effecting this stranding, the ship is so strained and destroyed as to be made unseaworthy,—whether the expense of her repair, or, if irreparable, her value before the stranding, should also be borne by the general average contribution?

According to the "Commentaire sur l'Ordonnance de la Marine," (liv. iii. tit. vii. of the "Ordonnance"), "the gross averages are the loss or damage suffered or endured for the common good and safety of merchandises and of vessel, for which reason the 12th article (or head) declares these common (or *general*), because they ought to be borne in common by the ship and the merchandises."[2] So the 6th article makes, *inter alia*, "the cables and masts broken or cut, the anchors and other effects abandoned, for the common safety,"—"and the charges of the unloading for entering into a harbour or into a river, or for recovering a vessel" ("stranded," adds the "Code de Commerce," Art. 400) "to float," to be "gross and general average."[3] And the Code enumerates among common or general averages:—"8. The expenses made for recovering to float the vessel stranded with the intention of escaping total loss." "And, in general" (continues the Code), "the damages voluntarily suffered and the expenses incurred after advising deliberations, for the common good and safety of a ship and of merchandises after their lading and departure, even to their return and unlading." Valin adds, from Art. 55 of the "Ordonnance" of Wisbuy and Cleirac upon Art. 4 of the "Judgments" of Oleron:—"It must be added, that if, for avoiding a total loss, the shipwreck being evident, the captain takes the resolution of running the ship aground, *the damage which the vessel will have suffered by that cause will be a gross and common average.*" And he adds, from the "Consulat," &c.:—"In a like case of stranding in order to avoid being taken, the charges for relieving or recovering the ship, or for recovering it, having been abandoned,—likewise also the expenses incurred during the stay of a ship in a port or under a citadel, are general averages, seeing all that has been done for the common safety. By a sameness of reason, the damage suffered by the

[1] Arnold, 898. [2] 2 Valin, 445, ed. Poitiers, 1828. [3] Ibid. 454.

ship and by any merchandise in fight, in order to avoid the taking, is also common average."[1]

However, neither "Ordonnance" nor the "Commentaire" meet the case put;—of the ship being so strained and destroyed, in effecting a stranding for the general benefit, and to avoid an evident and a greater impending danger, that she is stranded, or becomes immediately a wreck and irreparable,—does the consequent loss form a general average? Whether this is to be held, under the insurance law, as a total loss, does not appear to have occurred in this country,—nor the question whether the loss is to be borne by a general average contribution. But one or two cases of partial loss are closely analogous.

For instance,—where *goods* were insured from London to Maracyaibo, and "warranted free from capture and seizure;" but, about eight or nine miles from the port of destination, the ship was wrecked on a sandbank and totally disabled, and the goods, being in imminent danger, were seized and confiscated by Spanish royalists, then in possession of that port:—it was held, that the direct cause of the loss was the stranding, and that, notwithstanding the warranty, the underwriters were liable.[2] Where, also, a transport in the Government service was insured by a time policy for twelve months, and, during that time, she was ordered into the tide harbour of Boulogne, of which the bed or ground is hard and uneven, and, on the tide leaving her, she took the ground, and thereby received damage:—it was held, that this was a loss by perils of the sea, of which a voluntary and intentional stranding is one.[3] So, in another case, the ship insured having encountered tempestuous weather, took shelter in a harbour, in entering which she struck upon an anchor, and, when brought up to her moorings, was found leaky and in danger of sinking, and on that account was hauled further up the harbour, where she took the ground, and remained fast for half an hour:—this was held to be a stranding.[4] And where, on a voyage from Nantes to Dublin, the vessel had, from stress of weather, to run into the Bay of Palais, and the gale having increased, the captain let go the two bower anchors and chains; but the larger anchor dragging,—for the preservation of ship, cargo, and crew, and especially to prevent the ship running ashore,—the captain slipped the two chains overboard, got the ship under sail, and made out to enter the tidal harbour of Sanzon, where, it being then low water, she took the ground, and was kept there a month, floating only at the height of spring-tides:—it was held that this was a stranding.[5]

But a coasting vessel, insured, under an ordinary policy, against the perils of the sea, was, for unloading a cargo of timber, laid on a beach, where the tide ebbed and flowed, and which the captain knew was hard, steep, and shingly; but there was no unusual wind or sea-swell:—when the tide ebbed, the vessel took the ground, and being long and narrow, and the middle of her hull only resting on the beach, she cracked and became "hogged:"—it was held that this was not a loss by a peril of the sea (stranding), but arose from tear and wear, against which the underwriters did not insure.[6]

As a voluntary and intentional stranding is undertaken for the benefit

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[1] 2 Valin, 460.
[2] Hahn *v.* Corbet, 2 Bing. 205.
[3] Fletcher *v.* Inglis, 2 B. and A. 315.
[4] Barrow *v.* Bell, 4 B. and C. 736.
[5] Concoran *v.* Gurney, 1 El. and Bl. 456.
[6] Magnus *v.* Buttermer, 16 Jur. 480.

of the whole, both of ship and cargo, so the loss thence arising to either ship or cargo forms the matter of a general average contribution,—being for "a loss undergone for the general benefit and preservation of the whole," "towards which the whole concern is bound proportionally to contribute," "the loss, or *the expenses which the loss creates*, being incurred for the common benefit of both."[1] Accordingly, it is received law, that, if "*the ship be afterwards got off*, the damage thus voluntarily done to both ship and cargo, and the expense of recovering and unlading her, and the value of the goods thrown overboard to enable her to float, and so continue her voyage for the benefit of all concerned, are properly general average."[2] But the question does not seem to have arisen in this country: —whether, if, in effecting a voluntary stranding, the cargo is thereby saved, but the ship is, actually or constructively, lost,—is this loss, incurred for the general safety, to be made good by a general average contribution? It appears, however, from 2 Arnold, 901, that this question has been decided in the Supreme Court of the United States, in the following circumstances:—

A brig going down the Bay of Chesapeake found the weather too bad for proceeding to sea, and bore away for a headland in the bay, where she anchored; but the gale having increased, she dragged her anchors from time to time, till she struck on some shoals, and her head swinging round, she lay with her broadside to the wind and a heavy sea; and thus placed, and as the only chance of saving both ship and cargo, and preserving the lives of the crew, the captain slipped his cables, and ran the brig ashore, as far up the beach as possible, where, after the storm, she lay high and dry, without any possibility of getting her off; but the cargo was saved: —it was held, that the owners of the cargo were bound to contribute to the owners of the ship and freight for the loss upon both interests caused by the stranding,—J. Story stating:—"The intention is, not to destroy the ship, but, if possible, to place her, as well as the cargo, in less peril. The act (of stranding) is hazardous to the ship and cargo, but it is done to escape from a more pressing danger: it is done for the common safety; and *if the salvation of the cargo is thereby accomplished*, it is difficult to perceive why, because, from inevitable calamity, the danger has exceeded the expectation or intention of the parties, the whole sacrifice should be borne by the shipowner, when he has thereby accomplished the safety of the cargo."[3]

If, in effecting, or for the purpose of facilitating, a voluntary stranding, for the benefit of all, cables and anchors are voluntarily slipped,—ropes or cables cut,—or sails let go, or masts cut away,—these, having been intentionally and deliberately sacrificed for the good of all,—by the Rhodian law, are to be made good or recompensed by the contribution of all.[4]

2.—*Involuntary Stranding.*

The proper legal meaning of this stranding is very important, as, in the memorandum usually attached to policies *on goods*, certain *enumerated* articles are exempted from average, "unless general, or the ship be stranded,"

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[1] *Per* Sir W. Scott (Lord Stowell), in *The Copenhagen*, 1 Reb. Ad. Rep. 293.
[2] Shee's Abbot, 373. [3] 2 Arnold, 902. [4] Dig., lib. xiv. tit. 2.

or "from average under three per cent., unless general, or the ship be stranded,"—these latter words being to be read, "unless general, or *unless* the ship be stranded." These words are to be considered as an exception out of the memorandum exceptions, as to the amount of an average or partial loss, provided for by the memorandum, and, consequently, to leave the matter at large, according to the meaning of the policy. The meaning of this term "stranded," then is—"where ground is taken under any *extraordinary* circumstances of time or place, by reason of some *unusual* or *accidental* occurrence,—such an event shall be considered a stranding within the meaning of the memorandum."[1] And consequently, if such an event should happen, the underwriters are responsible for any loss by sea damage to the enumerated articles, however trifling that loss may be.[2]

But this loss or damage must be sustained while the cargo or some of the enumerated articles is on board, *after* the voyage has commenced,—during its continuance, and *before* its termination,—and, necessarily, *after* the stranding on that voyage; nor is it necessary that it be in consequence of that stranding, or be attributable to it.

As, if the ship be stranded, but the cargo suffers no damage, and *afterwards* the ship encounters bad weather and the cargo sustains an average loss, the underwriters are liable for the whole of that loss.[3] So, likewise, if the cargo of one of the enumerated articles has been necessarily landed at an intermediate port, and the ship is *afterwards* stranded on her way to the original port of destination;—this is not a stranding in terms of the exception in the memorandum,—not having happened *before* the forced termination of the voyage insured at the port of necessity.[4] And whether the stranding occurred while the ship was under the charge of the pilot or the captain, the damage is equally a damage in the course of the voyage, and within the scope of the exception in the memorandum.[5] But where a ship from Liverpool to St. John's, Newfoundland, having been stranded on the coast of Ireland, her entire cargo was taken out and forwarded by another vessel, and the stranded ship was then got off and taken to Liverpool to be repaired:—it was held, that these expenses were a particular average chargeable on the ship alone.[6] And it has been held that this exception does not extend to the stranding of a lighter carrying goods from the ship to the shore, but is restricted solely to the stranding of the ship.[7]

Keeping these in mind, and also that whether an obstruction of a ship, while water-borne, and in the course of her voyage, amounts to a stranding or not, may give rise to serious questions with the underwriters, and that, therefore, all the circumstances of such an obstruction or retardation, and especially the fixation or settling of the ship, and the length of time she remained, ought to be precisely observed, and faithfully entered in the ship's log,—it will be proper now to detail the cases held *not* to be, and those held *to be*, a stranding within this exception.

1. Where a ship, coming out of port with a pilot on board, struck on a rock about the length of a cable and a half from the shore, and remained

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1 *Per* Lord Tenterden, in Wells *v.* Hopwood, 3 B and Ad. 34.
2 Burnet *v.* Kensington, 7 T. R. 210. 3 *Per* Grose, J., in Burnet, *ut sup.*
4 Roux *v.* Salvador, 3 Bing. *n. s.* 276.
5 *Per* Lord Ellenborough, in Carruthers *v.* Sydebotham, 4 M. and S. 77.
6 Job *v.* Langton, 6 El. and Bl. 779. 7 Hoffman *v.* Marshall, 2 Bing. *n. c.* 583.

on her beam-ends *about a minute and a half*, and made a great deal of water in consequence,—but she floated and continued her voyage:—it was held that this was not a stranding,—there not being a settlement of the ship for a sufficient length of time to constitute a stranding, and Lord Ellenborough stating:—"I take it that stranding, in its fair legal sense, implies a *settling* of the ship."[1] Where, also, a ship, going up the river-harbour of Cork, with a pilot on board, took the ground from the shallowness of the water, and lay for about eight hours, and next day again took the ground and remained ten hours aground,—having been each time floated by the tide,—and at high-water she was moored to a quay in Cork harbour, where, on the tide receding, she fell over on her broadside, and so lay for two whole tides, and both ship and cargo were damaged:—it was held, that this was not a stranding within the exception, but only what occurs in the usual course of the navigation in that river-harbour, without any extraordinary accident.[2] And a vessel entered a tide-harbour, and was moored in the very place pointed out by the harbour-master, but, in taking the ground where it was intended, on the ebbing of the tide she grounded on some hard substance, and two holes were made in her bottom, and her cargo was thereby damaged:—it was held, that this was not a stranding, but merely taking the ground on the ebbing of the tide, and in the very place where it was intended she should.[3]

So that, in the words of Lord Tenterden,—"where a vessel takes the ground in the ordinary and usual course of navigation and management in a tide river or harbour, upon the ebbing of the tide, or from natural deficiency of water, so that she may float again upon the flow of the tide or increase of water, *such an event shall not be considered a stranding within the memorandum.*"[4]

2. But, on the other hand, and, as already quoted from the same learned Judge,—"where ground is taken under any extraordinary circumstances of time or place, by reason of some unusual or accidental occurrence,—such an event shall be considered a stranding within the meaning of the memorandum." And, as another learned Judge has said,—"where the taking of the ground does not happen *solely from those natural causes* which are necessarily incident to the ordinary course of the navigation in which the ship is engaged, either wholly or in part, *but from some accidental or extraneous cause*, that is a stranding."[5]

Thus, in one case, a vessel, in the course of her voyage upon an inland navigation, to repair which it became necessary to draw off the water,—was placed, when the water was drawn off, in the most secure place the captain could find, alongside four other vessels; but, by accident, she went upon some piles, which were not previously known to be there:—it was held, that this was a stranding within the exception in the memorandum,—the accident having happened not in the usual course of the voyage.[6] So where a ship was compelled by tempestuous weather to bear away for Holyhead, and, in entering the harbour, she struck upon an

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[1] M'Dougle *v.* Ro. Ex. Ass. Co., 4 M. and S. 503.
[2] Hearne *v.* Edmonds, 1 B. and B. 388.
[3] Kingsford *v.* Marshall, 8 Bing. 458.
[4] In Wells *v.* Hopwood, 3 B. and Ad. 34.
[5] *Per* Tindal, C.J., in Kingsford, *ut sup.*
[6] Rayner *v.* Godmond, 5 B. and A. 225.

anchor, by which she sprung a leak, and was in danger of sinking, and in consequence she was warped farther up the harbour, where she took the ground, and remained there for half-an hour:—it was held, that this was a stranding within the meaning of the exception.[1] Likewise, a ship was compelled, in the course of her voyage, to go into a tide-harbour, and was there moored alongside a quay, in the usual place for ships of her burden; and, in addition to the usual moorings, it became necessary to fasten her by tacklings to posts on shore, so as to prevent her falling over on the tide leaving her; but the rope thus fastening her, not being of sufficient strength, broke when the tide left, and she fell over on her side, was stove in, and greatly injured:—it was held, that this was a stranding within the meaning of that word in the memorandum, and that the underwriters were liable for a *partial loss*, though the stranding might have been occasioned remotely by the negligence of the crew, in not providing a rope of sufficient strength.[2] And, in another case, a ship,—having on board goods insured on a voyage from London to Hull, "warranted free from average unless general or the ship be stranded,"—arrived in Hull harbour, which is a tide-harbour, and proceeded to discharge her cargo at a quay on the side of it, and this could be done at high-water only, and could not be finished in one tide:—at the first low tide, the vessel grounded on the mud; but, on a subsequent ebb, the head-rope, mooring her to the east or opposite side of the harbour, became stretched, and, as the wind was then blowing from the east, she did not ground entirely on the mud, but her forepart grounded on a bank of stones, rubbish, and sand, and some damage was done to the cargo, but the vessel, though strained, received no lasting injury:—it was held, that this was a stranding within the meaning of that term in the memorandum.[3]

These were all insurance cases; and the question—whether the ship was stranded or not?—ruled the underwriters' liability or non-liability for any loss on the memorandum articles, then or afterwards sustained during the voyage. The words "unless the ship be stranded" are not in the policies of the Royal Exchange Assurance Company, but are in those of the London Assurance Company, and of joint-stock assurance companies and of private underwriters. Except as to the memorandum articles, stranding is a peril of the sea.[4]

II.—EXHIBITION OF LIGHTS AND USE OF FOG-SIGNALS.

By section 295 of the Merchant Shipping Act, the Admiralty was required to make regulations for the exhibition of lights and the use of fog-signals by such classes of ships, whether steam or sailing ships, within such places and under such circumstances as the Admiralty thought fit; and, accordingly, the Admiralty made such regulations, and published figures to illustrate the use of the lights. But this section has been repealed; and section 25 of the 25 and 26 Vict., cap. 63, enacts that, on and after 1st June 1863, the regulations here following, as to lights and fog-signals, should come into operation,—which regulations are almost identical to

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1 Barrow *v.* Bell, 4 B. and C. 736.
2 Bishop *v.* Pentland, 7 B. and C. 219.
3 Wells *v.* Hopwood, *ut sup.*
4 2 Arnold, 796.

the previous Admiralty regulations, according to which the cases after adduced have been adjudged :—

Art. 1 provides that, in the rules, every steam-ship *which is under sail, and not under steam*, is to be considered *a sailing ship*; and every steam-ship *which is under steam, whether under sail or not*, is to be considered *a ship under steam*: and Art. 2 specially directs that the following lights, *and no others*, shall be carried in all weathers *between sunset and sunrise* :—

I. Lights for Steam-Ships.—*Sea-going* steam-ships, when under weigh, to carry:—1. *At the foremast-head*,—a bright *white* light, so fixed as to show a uniform (all alike) and unbroken light over an arc of the horizon (*i.e.*, a part of a circle cut off by drawing a straight line across) of twenty points of the compass,—and to throw the light ten points on each side of the ship,—viz., from right ahead to two points abaft the beam on both sides,—and so as to be visible on a dark night with a clear atmosphere at a distance of at least five miles. 2. *On the starboard side*,—a *green* light, so constructed as to throw a uniform and unbroken light over an arc of the horizon of ten points of the compass,—and so fixed as to throw the light from right ahead to two points abaft the beam on the starboard side, and of such a character as to be visible on a dark night with a clear atmosphere at a distance of at least two miles. 3. *On the port side*,—a *red* light, so constructed as to show a uniform and unbroken light over an arc of the horizon of ten points of the compass, and so fixed as to throw the light from right ahead to two points abaft the beam on the port side, and of such a character as to be visible on a dark night with a clear atmosphere at a distance of at least two miles. 4. These green and red side lights are to be fitted with inboard (*inside*) screens, projecting at least three feet forward from the light, so as to prevent these lights from being seen across the bow (Art. 3). 5. When steam-ships are towing other ships, the steam-ship carries two bright white mast-head lights placed vertically (*i.e.*, perpendicularly, the one above the other,—not in the shrouds, —the larboard mizzen-rigging,—or at the bowsprit end,—but at the top of the standing mast), *in addition to the side lights*, so as to distinguish a towing steam-ship from other steam-ships. Each of these mast-head lights must be of the same construction and character as the mast-head lights that other steam-ships are required to carry (Art. 4).

II. Lights for Sailing Ships.—Sailing ships, under weigh or being towed, have to carry the same lights as steam-ships *under weigh*, excepting the white mast-head lights, which they must never carry (Art. 5).

Exceptional Lights for Small Sailing Vessels.—Whenever, as in the case of small vessels during bad weather, the green and red lights cannot be fixed, these lights must be kept on deck, on their respective sides of the vessel (*the green light on the starboard side, and the red light on the port side*), ready for instant (*immediate*) exhibition, and, on the approach of or to other vessels, must be exhibited on their respective sides, in sufficient time to prevent collision, and in such a manner as to make these lights most visible; but so that the *green light* shall not be seen on the port side, nor the *red light* on the starboard side. And to make the use of these portable lights easier and more certain, each must be painted outside with the colour of its contained light, and must be provided with suitable screens (Art. 6).

III. LIGHTS FOR SHIPS AT ANCHOR.—When at anchor in roadsteads, and between sunset and sunrise,—ships,—both steam-ships and sailing ships—have to exhibit,—where it can be best seen, but at a height not exceeding 20 feet above the hull,—a *white light* in a globular (*round-shaped*) lantern of 8 inches in diameter, and so constructed as to show a clear, uniform, and unbroken light, visible all round the horizon, and at a distance of at least one mile (Art. 7).

IV. LIGHTS FOR PILOT VESSELS.—Sailing pilot vessels must not carry the lights required for *other sailing vessels*, but must carry a *white light* at the mast-head, visible all round the horizon,—and must also exhibit a flare-up light (*i.e., a sudden and momentary bright flash of light*) every fifteen minutes (Art. 8).

V. LIGHTS FOR FISHING BOATS AND VESSELS.—Open fishing-boats and other open boats are not required to carry *side lights*, as required for other vessels; but, if they do not carry such lights, they must carry a lantern having a *green slide* on the one side, and a *red slide* on the other; and, on the approach of or to other vessels, this lantern must be exhibited in sufficient time to prevent a collision,—so that the *green light* shall not be seen on the *port side*, nor the *red light* on the *starboard side*.

When fishing vessels and open boats are at anchor, or attached to their nets and stationary, they must exhibit a *bright white light*. Fishing vessels and open boats are, however, not prevented from using, in addition, a *flare-up* light, if considered proper (Art. 9).

The foregoing regulations are substantially the same as the Admiralty regulations, which came into operation in October 1858; and the decided cases as to the exhibition of lights will now be given in the above order:—

I. STEAM-SHIP LIGHTS.—1. *Mast-head Lights.*—By the Admiralty regulations under section 26 of the 14 and 15 Vict., cap. 96, *sailing vessels* at anchor in a roadstead were required to exhibit a bright light at the mast-head between sunset and sunrise; and it was held, that the statute imposed *upon the person in charge of the vessel* the duty of exhibiting the light at the mast-head, and on his failure to do so, subjected *him* to a penalty; but that the owner was not liable, either to a penalty or to an action, for the neglect of his servant in omitting to exhibit the light.[1] This Act was repealed by the Merchant Shipping Repeal Act, 1854; and now, by Art. 3 of Table C, annexed to the Merchant Shipping Amendment Act, 1862, *sea-going steam-ships* alone, when under weigh, carry a fixed bright light at the foremast-head; and by Art. 5, "*sailing ships* under weigh or being towed" "shall never carry" "the white mast-head lights."

2. *The Green Light on the Starboard Side.*—It is essential that the captain of a steam-ship have his lights properly trimmed and burning; and, therefore, when, in the collision of two steam vessels, the green light of the one had gone out previous to the collision,—the defence was sustained, that the captain of the other steam vessel, thinking the approaching vessel was a sailing vessel, had ported his helm, in conformity to the general rules of navigation.[2] On a clear night, in the Sea of Marmora, a steamer, C., steering N. ½ E., saw the bright and green lights of the S.,

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1 General Steam Navigation Co. *v.* Morrison, 17 Jur. 673.
2 *The Rob Roy*, 3 Rob. Ad. C. 190.

three points on her starboard bow, and at least three miles distant, and she starboarded her helm, and then put it hard to starboard:—the S. having ported her helm when she made out the C., a collision followed:—it was held, that the two vessels were meeting each other within the meaning of section 296 of the Merchant Shipping Act, 1854 (for which the now enacted regulations are substituted), and that the C., in not having ported her helm, was solely to blame for the collision.[1] A galliot, running up the Channel, saw the *green* light of a steamer three or four points on her starboard bow, and starboarded her helm; then she saw the steamer's *red* light appear, and ported her helm; and a collision followed,—the stem of the steamer running into the port midships of the galliot:—it was held, that the galliot was justified in starboarding when she saw the *green* light, and afterwards in porting when she saw the *red* light appear, and that the manner of the collision showed that the steamer either starboarded her helm, or ported too late, or did not port at all.[2] And when, on port tack, with wind free, at night, a vessel saw the *green* light of a steamer broad on her starboard bow, and she then showed a light, but did not alter her course till the steamer was close on her, when she starboarded to ease the then unavoidable collision:—it was held, that neither common sense nor the rule of section 296, required her to port her helm, for there could be no danger while the *green* light was broad on the starboard bow.[3]

3. *The Red Light on the Port Side.*—A barge going down the Thames saw the *red* light of a steamer broad on her port bow, and took no steps; and, shortly after, the steamer's *green* light suddenly opened, showing that the steamer had starboarded her helm, and was coming direct towards her (coming to anchor because the night was very dark), and then the barge instantly showed a light and ported:—it was held, that the vessels were not approaching in the first instance, within the meaning of the Admiralty rules, and that the barge was not to blame.[4] And when a sailing vessel, steering W.S.W., with the wind S. by E., saw a light ahead, which the mate mistook for Dungeness light, and ported the helm; and, when he found that the light was the light of a steamer, he continued his course:—the steamer, on seeing the light of the sailing vessel, ported her helm, and, as the consequence, struck the sailing vessel on the starboard side and sunk her:—it was held, that the sailing vessel was to blame in not porting her helm when she made out the *red* light of the steamer.[5]

3. *Two Bright White Mast-head Lights for Steam-ships towing other Ships.*—It has been held, that a vessel towed by a steam-tug and the steam-tug towing are to be considered as one vessel, for the conduct of which the towed vessel is responsible; and it is the duty of a steam-tug with a vessel in tow to avoid other vessels, though a steam-tug thus towing is not a free steamer, bound, under all circumstances, to give way to a close-hauled sailing vessel.[6] And it has been held, that a steamer towing is not under the same obligation to give way to sailing vessels as a steamer not towing.[7] And, in another case, a steamer going at night down the Tyne, southward of the mid-channel, saw the light of a steam-tug on her *port* bow, and the light of another steam-tug nearly ahead on

[1] *The Cleopatra*, 1 Swabey, 135.
[2] *The Sylph*, 1 Swabey, 233.
[3] *The Ericsson*, 1 Swabey, 383.
[4] *The Ceres*, 1 Swabey, 250.
[5] *The Mangerton*, 1 Swabey, 120.
[6] *The Cleadon*, 14 Moore, P. C. C. 92.
[7] *The Arthur Gordon*, 1 Lushington, 270.

her *starboard* bow; and she kept her course, intending to pass between them, till she saw a sloop just on her port bow, in tow of the latter tug; and she then ported her helm, intending to pass between the tug and the sloop, and in doing so, came into collision with the sloop:—it was held, that the steamer was in fault for not having ported when she first saw the light of the tug,—and that the sloop was also to blame for not having shown a light.[1]

II. LIGHTS FOR SAILING SHIPS under weigh or being towed are the same as are carried by steam-ships *under weigh*, only sailing ships must never carry the white mast-head lights; and it is the general rule of the sea, that every vessel, whether close-hauled or at anchor, is bound to show a light.[2] Accordingly, it has been held, that a British vessel, not showing these coloured lights, is guilty of a violation of the rule, and that, to escape the penal consequences, it must be proved that it was impracticable to have carried them; and, therefore, where a British ship neither carried nor exhibited the coloured lights, and a collision having been occasioned by this failure,—she was condemned in the damage.[3] And it has been held, that, if a collision has been caused by a vessel not having carried these coloured lights, *fixed as required*,—the blame will be on the owners, unless they prove that, in the circumstances, it was impracticable to observe the rule.[4]

Nor will the circumstance of its being a bright, clear, moonlight night, relieve a hove-to sailing vessel from compliance with the regulations for exhibiting a light; and when this failure or omission is the cause of a collision, without any failure or omission on the part of the other vessel, —the owners of the first vessel will be precluded from recovering damages from the impinging vessel.[5] And if a British vessel loses her lights by tempestuous weather, she is bound to obtain new lights on the first opportunity,—and if a collision is occasioned solely by a vessel not exhibiting the regulation lights, that vessel is excluded from recovering anything.[6] It has been held, that a signal-lamp, on the bowsprit end of a sailing vessel, with a white glass in the centre, a red glass on the port side, and a green glass on the starboard side, is not conform to the rules as to lights.[7] And, therefore, where a barque, close-hauled on the starboard tack, with a lantern having three different coloured glasses at her bowsprit end, saw the red light of a steamer to windward, and nearly ahead,—and she kept her course, and showed, as was alleged, a bright light over her starboard quarter on the steamer nearing her,—but a collison followed: —it was held, that the barque's light at the bowsprit end was not a sufficient light conform to the regulations, and that it was not proved she had showed the other light in sufficient time.[8]

By Table C, annexed to the said Merchant Shipping Acts Amendment Act, the following rules are prescribed as to fog-signals:—

When there is a fog (thick mist), whether by day or night, the following fog-signals (which have to be carried) must be used and be sounded at least every fifteen minutes:—

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1 *The Unity*, 1 Swabey, 101.
2 *The Eclipse* and *The Saxonia*, 8 Jur. *n. s.* 315.
3 *The Livingstone*, 1 Swabey, 519.
4 *The Galla*, 1 Swabey, 465.
5 Morgan *v.* Sim, 11 Moore, 307.
6 *The Aurora*, 1 Lushington, 327.
7 *The Mangerton*, 1 Swabey, 120.
8 *The Urania*, 1 Swabey, 253.

1. *Steam-ships under weigh* must use a *steam-whistle* placed before the funnel, and not less than 8 feet from the deck.

2. *Sailing ships under weigh* must use a *fog-horn.*

3. Steam-ships and sailing ships, *when not under weigh*, must use a bell (Art. 10).

In regard to fogs, it may be well for owners and captains to keep in mind the opinion expressed by Sir John Nicholl, then Judge of the High Court of Admiralty, in a case of collision between *The Girolamo*, an Austrian vessel, with a licensed pilot on board, and *The Edward*, a British ship, moored below Woolwich :—" Did the accident arise " (asked Sir John) " from the '*neglect, default, incompetency or incapacity*' of the pilot ?—(these are the words of section 55 of the then Pilot Act, 6 Geo. IV., cap. 125) —or was the master in equal fault ? *It occurred from the vessel going on in a fog*, not from an act of bad steerage, a want of knowledge of shoals, or any incapacity in the pilot, *but from proceeding at all.* It seems to be nearly admitted, that, if the vessel had set off in this fog, blame would have been imputable to the master,—if so, was he not blameable *in going on* in the fog ? Had he not a right to resume his authority ? Did he not owe it to his owner, and to other persons, whose property might be damaged by a collision, to insist on bringing the vessel up ? Was not the master in duty bound at least to remonstrate with the pilot, and to represent the danger of proceeding ? Yet, he says in his affidavit,—' he did not in the least interfere.' "[1] And as the court had formerly held, that the statute imposed upon the person in charge of the vessel the duty of exhibiting the light at the mast-head,[2]—so section 28 of the Merchant Shipping Acts Amendment Act enacts, that in case any damage arises to person or property from the non-observance (not careful obedience) by any ship of the foregoing regulations,—this damage is held to have been occasioned by the wilful default (obstinate failure or omission) *of the person in charge of the deck of that ship at the time*, unless it is shown that the circumstances rendered a departure from the regulation necessary.[3]

And by the Merchant Shipping Act, 1873, 36 and 37 Vict., cap. 85, sec. 17, it is enacted, that if, in any case of collision, it be proved to the court before which the case is tried, that any of the regulations for preventing collision contained in any of the Merchant Shipping Acts has been infringed, the ship by which such regulation has been infringed is to be deemed to be in fault, unless it is shown to the satisfaction of the court that the circumstances of the case made departure from the regulation necessary.

In order to enforce compliance with the foregoing regulations, the following steps may be taken :—

1. The surveyors appointed under section 221 of the Merchant Shipping Act, or such other persons as the Board of Trade appoint for the purpose, can inspect any ships for the purpose of seeing that they are properly provided with lights and the means of making fog-signals, in terms of these regulations, and, for this purpose, they have the powers given to inspectors by section 14 of that Act.

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[1] *Per* Sir John Nicholl, in *The Girolamo*, 3 Hag. Ad. R. 176.
[2] General Steam Navigation Co., *ut ante.*
[3] 25 and 26 Vict., cap. 63, sec. 28.

2. If the surveyor or the said other person finds that any ship is not thus provided, he must give to the captain or owner written notice, stating the deficiency, and what, in his opinion, is required to remedy the defect.

3. Every such notice must be communicated, as the Board of Trade directs, to the collector or collectors of customs at any port or ports from which such ship may seek to clear, or at which her transire is to be obtained; and no collector to whom such a communication is made must clear that ship outwards, or give her a transire, or allow her to proceed to sea, without a certificate from one of the surveyors, or of the other persons aforesaid, that that ship is properly provided with lights and with the means of making fog-signals, in terms of said regulations.[1]

And *all* captains and owners of ships are bound to take notice of all the foresaid regulations, and to obey them so long as these are in force, and to carry and exhibit no other lights, and to use no other fog-signals, than these regulations require; and, in case of wilful failure or omission,—the captain, or the owner, if he was in fault, is held, for each breach of these regulations, to be guilty of a misdemeanour.[2]

But, notwithstanding anything in the Act or in the regulations, any rules as to the lights or signals for vessels navigating the waters of any harbour, river, or inland navigation, or as to the steps (means or measures) to be taken by these vessels for avoiding collision that have been or may be made under any local Act, are to continue and to be in full force and effect.[3] And on application from the Harbour Trust or corporate body (if any) having or exercising jurisdiction (power and authority) upon the waters of any harbour, &c.,—or, if there is no such trust or body, upon application from persons interested in the navigation of such waters, for which rules (as stated in the preceding section) are not and cannot be made under any local Act, it is lawful for Her Majesty in Council to make rules as to the lights or signals to be carried, and the steps for avoiding collision to be taken, by vessels navigating such waters; and, as regards these vessels, such rules, when so in use, are to have the same effect as if they had been embodied in the foresaid regulations.[4]

III.—COLLISION.

The collision of ships at sea may arise from mere accident, or from a misfortune which may occur by one ship running down or being run down by another, or being driven against another, or by two coming in contact; and the four possibilities under which such a disaster may occur have been thus very clearly stated by the late Lord Stowell, then the very learned Judge of the High Court of Admiralty:—

"There are four possibilities under which an accident of this sort may occur. In the first place, it may happen without blame being imputable to either party, as where the loss is occasioned by a storm or *any* other *vis major;* and in that case, the misfortune must be borne by the party on whom it happens to light,—the other party not being responsible to him in any degree. Secondly, a misfortune of this kind may arise where both parties are to blame; where there has been a want of due diligence or skill on both sides. In such a case, the rule of law is, that the loss must

[1] Sec. 30. [2] Sec. 27. [3] Sec. 31. [4] Sec. 32.

be apportioned among them, as having been occasioned by the fault of both. Thirdly, it may happen by the misconduct of the suffering party only; and then the rule is, that the sufferer must bear his own burden. Lastly, it may have been the fault of the ship which run the other down; and, in this case, the injured party would be entitled to an entire compensation from the other."[1]

In the first of these possibilities, the loss sustained is held to be a loss by a peril of the sea; and, where the vessel is insured, it can be recovered from the underwriters. In the second, where both ships are in fault, and the whole damage is sustained by one, this damage must be borne equally by both parties;[2] and where a close-hauled vessel on the larboard tack, and a starboard-tacked vessel, with the wind free, met each other, and neither gave way in time so as to avoid the probability of a collision:—it was held, that both vessels were equally in fault; but that the former was not justified in keeping her luff, but, where practicable, she was bound to take the necessary precautions for avoiding the collision, though the other vessel was acting wrong in not bearing away.[3] And it is the law and rule of the sea, that a vessel having the wind free is to give way to a vessel close-hauled, and that a vessel under steam is always to be considered as going free.[4] But, where both vessels were to blame,—only, with respect to one of them, the blame was to be attributed to the pilot, who had been taken on board under a local (the Liverpool) Pilot Act:—it was held, that such vessel was not to contribute to the loss, but each party was held to pay his own costs.[5] In the third possibility,—where the damage was chiefly imputable to mismanagement or inattention on board the vessel damaged, the owners of the other were not liable in these damages.[6] And the rules,—that when a steam or sailing ship, proceeding in one direction, *meets* another steam or sailing ship, proceeding in another direction,—so that, if both vessels were to continue their respective courses, they would pass so near as to run the risk of a collision,—the helms of both ships must be put to port, so as to pass on the port side of each other,—and that the ship by which this rule has been broken shall not recover damage,—it has been held, apply only to cases in which the vessels *meet end on*, and when the observance of the rule would make the vessels so to turn away from each other as to pass port side to port side.[7] Accordingly, when, in the open sea and in the daytime a sailing vessel close-hauled on the port tack, and a steamer towing a large ship, were standing so as to cross each other's bows, the steamer being on the lee beam of the sailing vessel, and a collision took place:—it was held, that the sailing vessel was to blame *for holding her reach*, and the steamer was also to blame for taking no measure to avoid collision.[8] And as steam vessels navigate according to prescribed rules as to the number and colour of lights to be carried, it is essential that the master of each vessel have his lights properly trimmed and burning; and where the green light of one steam vessel had gone out previous to the collision with another steam vessel,—the defence of the latter vessel, that the master,—

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[1] *The Woodrop*, 2 Dod. Ad. R. 83.
[2] Kay *v.* Le Neve, 2 Shaw's Sc. App. C. 395.
[3] *The Commerce*, 3 Rob. Ad. R. 287.
[4] *The Eclipse* and *The Saxonia*, 8 Jur. *n. s.* 315.
[5] *The Montreal*, 17 Jur. 538.
[6] *The Ligo*, 2 Hag. 356.
[7] Maddox *v.* Fisher (*The Independence*), 9 W. R. 582.
[8] *The Arthur Gordon* and *The Independence*, 1 Lushington, 276.

upon the supposition that the approaching vessel was a sailing vessel,—acted in conformity with the general rules of navigation by porting his helm,—was sustained.[1] So where two steamers were approaching each other in opposite and parallel directions, and saw the lights of each other several miles off,—the one, when coming near, put her helm hard a-port, and the other put her helm hard a-starboard, and a collision followed :—it was held, that a vessel obeying the rule, has a right to trust that the vessel she meets, if a British vessel, will obey it also; and, therefore, when the one steamer, a mile and a half off, starboarded instead of porting her helm, she was, at first sight, in the wrong, though, if both had starboarded at that time, the risk of collision would have been equally avoided.[2] And in a case of collision on the Thames, between the steamer *Menai* and the schooner *The Friends*,—the *Menai* was coming up the river on the Kentish shore, distant about one-third of the whole breadth of the reach, the night being dark, the tide ebbing, and the wind blowing strong from the west,—when a vessel was observed coming down the river just open over the starboard bow; and, as soon as the vessel was reported, the helm of the *Menai* was put to starboard, in the full belief that the schooner would keep down the mid-channel, in order to go down with the strength of the tide :—it was held, that the steamer was to blame for putting her helm to starboard, and the schooner had conducted herself properly; and the claim of the steamer was dismissed with costs.[3]

And, in the last division of the possibilities, when one ship is injured or run down by the fault of another, the injured ship obtains full reparation. As when one ship was light, and had the wind free, and another was laden and hard up to the wind, and the latter was run down by the former,—it was said from the bench :—"The plaintiff's ship was not in fault in steering as she did, for she had a right to expect that the defendant's ship, which had the wind, and might go as large as she pleased, would do that which ought to be done, and would make way;"—"the fault was wholly that the defendant, having the wind, did not make way for the plaintiff's ship, as he should have done."[4] And as it is incumbent on ships, under ordinary circumstances, to port their helms when approaching, should there be danger of collision,—and vessels must so act towards each other, upon the presumption that that rule will be acted on; and, therefore, a sailing vessel, not having ported her helm in sufficient time, and not having the proper regulation lights,—having been run into by a steamer,—it was held that the steamer was not to blame for the collision.[5] In another case, one vessel was steering north with a fair wind, and another vessel was on the starboard tack and close-hauled,—the rule of the sea, in such a case, being, that the former should go astern of the latter,—it was held, that, notwithstanding the rule in section 296 of the Merchant Shipping Act, the latter vessel was entitled to keep on her course, presuming that the former would give way to her; and the former vessel not having seen the latter till it was too late, and having then ported her helm, which led to a collision :—it was held, that the former vessel was not entitled to recover.[6] It has also been held, that section 296 is not confined to cases where one

1 *The Rob Roy*, 3 W. Rob. 190.
2 *The Araxes* and *The Black Prince*, 5 L. J. *n. s.* 39.
3 *The Friends*, 1 W. Rob. 478.
4 *Per* Bayley, B, in Vennal *v.* Garner, 3 Tyrwh. 86.
5 *The Mangerton*, 2 Jur. *n. s.* 620.
6 *The Dumfries*, 1 Swabey, 125.

vessel only is in fault, but applies also to the case of vessels lying to;[1] and it lies on the party seeking to recover damages for a collision, to prove that the loss was occasioned by the fault or neglect of the other party, otherwise he cannot recover.[2]

However, the rules as to ships' lights and meeting and passing in sections 295, 296, 297, 298, and 299, of the Merchant Shipping Act, 1854, are now repealed; and, in addition to the lights to be carried, and the fog-signals to be used, as already detailed, the Merchant Shipping Act Amendment Act, 1862, prescribes, for sailing and steam ships, the following

STEERING AND SAILING RULES.

1. *Two Sailing Ships Meeting.*—If two *sailing* ships are meeting end on, or nearly end on, so as to involve (comprise) risk of collision, the helms of both shall be *put to port*, so that each may pass on the port side of the other.

It had been previously decided, that this rule applies to vessels meeting in opposite directions, end on, or nearly so, when the attending to this rule will make the vessels diverge (turn aside) in different directions, so as to pass port side to port side;[3] and, therefore, if one of the vessels has neglected to port her helm, she cannot recover, though the other vessel was also in fault.[4]

2. *Two Sailing Ships Crossing.*—When two sailing ships are crossing, so as to involve risk of collision,—then, if they have the wind on different sides, the ship *with the wind on the port side*, shall keep out of the way of the ship *with the wind on the starboard side*, except (unless) in the case in which the ship with the wind on the port side is *close-hauled*, and the other ship (with the wind on the starboard side) *is free*, in which case, the latter ship shall keep out of the way; but, if they have the wind on the same side, or, if one of them has the wind aft (astern), the ship which is to windward shall keep out of the way of the ship which is to leeward.

It has been held, that a vessel on her port tack is bound to give way to a vessel on her starboard tack, and, if there is any danger of collision, to port her helm, and go to leeward of the other vessel, which is to keep her course.[5] So it was held, in a collision off the Lizard, that a barque was solely to blame for not giving way in a dark night to a small schooner, on the starboard tack, under close-reefed sails, and close-hauled to the wind.[6] And where a schooner, with a fair wind from the S.S.W., was steering north, and a barque, close-hauled on the starboard tack, was steering S.S.E., when they saw each other,—in such a case, the rule of the sea being that the schooner should go astern of the barque; and a collision having taken place:—it was held, that the barque was entitled to keep on her course, and to trust that the schooner would give way to her; but she, not having ported her helm till it was too late (which led to the collision), was not entitled to recover.[7]

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[1] *The James*, 1 Swabey, 60.
[2] Morgan *v.* Sim, 11 Moore's P. C. C. 307.
[3] Maddox *v.* Fisher, 14 Moore, 103; *The Arthur Gordon* and *The Independence*, 1 Lushington, 270.
[4] *The James, ut sup.*
[5] Zygasti *v.* Lamer, 12 Moore, 331.
[6] Mackay *v.* Roberts, 9 Moore, 357.
[7] *The Dumfries*, 1 Swabey, 125.

Should a collision take place from the not attending to the rules in the latter part of this article, the questions will be:—whether the collision was occasioned wholly by the negligence or improper conduct of those in charge of the ship complained against?—or, whether the complaining ship was so far adding to the misfortune, by the negligence or want of ordinary and common care and caution, on the part of those in charge of the ship complaining, that, unless for these, the collision would not have happened? In the first case, the complaining ship will be entitled to recover; but, in the latter case, she will not, as the collision would not have happened unless for her own fault.[1]

3. *Two Ships under Steam Meeting.*—If two ships under steam are meeting end on, or nearly end on, so as to involve risk of collision, the helms of both shall be put to port, so that each may pass on the port side of the other.

Thus a steamer, on a clear night in the Sea of Marmora, was steering E. ½ N., and saw the lights of another steamer three points on her starboard bow, and at least three miles distant, and she first starboarded her helm, and then put it hard to starboard; and the other steamer, having ported her helm when she made out the first steamer, a collision followed:—it was held, that the vessels were meeting each other, and that the first steamer was solely to blame for the collision, in not having ported her helm.[2] And when two steamers were approaching each other in opposite and parallel directions, and about a mile and a half off the steamer A. put her helm hard a-port, and the steamer B. put her helm hard a-starboard, and a collision followed:—it was held that the steamer B. was clearly in the wrong in starboarding her helm, instead of porting it.[3]

4. *Two Ships under Steam Crossing.*—If two ships under steam are crossing, so as to involve risk of collision, the ship *which has the other on her starboard side* shall keep out of the way of the other.

The rule is, that the vessel on her port tack is bound to give way to a vessel on her starboard tack, and if there is any danger of collision, to port her helm, and go to leeward of the other vessel, which is to keep her course.[4]

5. *Sailing Ship and Ship under Steam.*—If two ships, one of which is a sailing ship and the other a steam-ship, are proceeding in such directions as to involve risk of collision, the steam-ship shall keep out of the way of the sailing ship.

This fifth rule is an authoritative enactment of the order published by the Trinity House Corporation in October 1840, that "steam vessels may be considered in the light of vessels navigating with a fair wind, and should give way to sailing vessels on a wind, on either tack." And it has been held by the Court of Admiralty, on the report of the Trinity Masters, that the state of the wind was of no great importance, as steam vessels having greater power, and being more completely under command, must always give way to sailing vessels, so as to avoid collision.[5]

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1 Truff *v.* Warman, 5 Jur. *n. s.* 222.
2 *The Cleopatra*, 1 Swabey, 135.
3 *The Araxes* and *The Black Prince*, 5 L. T. *n. s.* 39.
4 Zugasti, *ut sup.*
5 *The Shannon*, 2 Hag. Ad. R. 173.

6. *Ships under Steam to Slacken Speed.*—Every steam-ship, when approaching another ship, so as to involve risk of collision, shall slacken her speed, or, if necessary, stop and reverse; and every steam-ship, when in a fog, shall go at a moderate speed.

In one case, a large steamer was proceeding up the Pool in charge of a licensed pilot, but at a dangerous rate of speed, and at nearly high water, and she caused such a swell as sunk a barge, to which no blame or negligence was ascribed:—it was held, that the steamer was to blame, as the swell that sunk the barge was owing to her speed;—that she was also to blame in not having kept a good look-out;—and that the pilot was solely to blame, in not checking the speed or not stopping the engine.[1] And in another case, a steamer was going, in a dark night, ten knots an hour in the Horse Channel, at the entrance of the Mersey, when she saw a sail three points on her port bow, and distant less than half a mile,—and she ported her helm, but did not ease her engine, and a collision followed:—it was held, that the steamer was in fault for not having eased or stopped her engine when she made out the other vessel, and that keeping up such a speed was unwarrantable.[2]

7. *Vessels Overtaking other Vessels.*—Every vessel overtaking (coming up with) any other vessel, shall keep out of the way of the vessel last mentioned.

8. *Construction of Arts.* 12–17 (2, 4, 5, 7).—Where, by the above rules, one of two ships is to keep out of the way, the other shall keep her course, subject to (under) the qualifications (occasions and opportunities) in the following article.

9. *Provision to save Special Cases.*—In construing (explaining and setting forth) these rules, due regard must be had to all dangers of navigation, and to any special circumstances which may exist in any particular case, rendering a departure from the above rules necessary in order to avoid immediate danger.

As, for instance, where there is a probability of a collision, a vessel close-hauled on the starboard tack is not justified in keeping her luff, though the vessel she is meeting is on the starboard tack with the wind free,—but if she can, she is bound to take the necessary forehand care and foresight for avoiding a collision, though the other vessel is acting improperly in not bearing away:—and therefore, a close-hauled ship and a starboard-tacked ship, with the wind free, meeting each other, and neither having given way in time,—both were held to be equally in fault.[3] So when, in the open sea and in daylight, a close-hauled sailing vessel and a steamer towing a large ship were standing so as to cross each other's bows,—the steamer being on the lee beam of the sailing vessel,—and a collision followed:—it was held, that the sailing vessel was wrong in holding her tack, as *a steamer towing* does not require to give way to a sailing vessel as a steamer not towing does; and that the steamer was likewise to blame for taking no means in time to avoid collision.[4] And two vessels in a river,

[1] Netherlands Steamboat Co. *v.* Styles, 9 Moore, 286.
[2] *The Despatch*, 1 Swabey, 138.
[3] *The Commerce*, 3 W. Rob. 287.
[4] *The Arthur Gordon* and *The Independence*, 1 Lushington, 270.

the one going down and the other crossing it, sighted each other half a mile off, and the latter vessel having intended to turn her head down the river, was baffled by the tide, but neglected to run up her outer jib, so as to aid the operation :—it was held, that the first vessel acted rightly in not altering the course she had properly taken, upon observing the other vessel's purpose, she being entitled to take for granted that that vessel would take all the means proper for carrying out that purpose.[1]

But it is no excuse for a collision that the damage-doing vessel was under charter-party to the French Government, and was towed by a steamer athwart the hawse of another vessel, and was obliged by her charter-party to obey orders, and to put herself in tow of the steamer, and that she, therefore, was not liable for the damage done :—it being held, that this obligation, being a voluntary stipulation entered into by the owners themselves, was no ground of exemption from their liability for the damage thus done.[2] And where a steamer, trading between England and France, in going up the Thames, crossed over, at Gravesend, from the north to the south shore, to take on board the customs officers at the appointed station, and, in so crossing over, the steamer ran down and sank a steam-tug :—it was held, that an order of the customs authorities cannot overrule the express regulations of the Act, and that such a custom, in obedience to this order, is not a circumstance to render a departure from the rule necessary.[3]

By section 17 of the Merchant Shipping Act, 1873, 36 and 37 Vict., cap. 85, if in any case of collision it is proved to the court before which the case is tried, that any of the regulations for preventing collision have been infringed, the ship by which such regulations have been infringed shall be deemed to be in fault, unless it is shown to the satisfaction of the court, that the circumstances of the case made departure from the regulations necessary. And Art. 20 of Table C conditions, that "nothing in these rules" (as before given) "shall exonerate" (relieve and discharge) "any ship, or the owner or the master or crew thereof, from the consequences of any neglect to carry lights or signals,—or *of any neglect to keep a proper look-out*,—or of the neglect of any precaution which may be required by the ordinary practice of seamen, or by the special circumstances of the case."

And by section 16 of the last-mentioned Act, it is, in the case of a collision, the duty of the master *in charge of each ship*, if and so far as he can do so without danger to his own vessel, crew, and passengers, to stay by the other vessel, and to render such assistance as may be practicable and necessary in order to save the other vessel, her master, crew, and passengers, from danger; and also to give to the master of the other vessel the name of his own vessel, the port of registry, and also the names of the ports from and to which she is bound. If he fails to do so, without reasonable cause, the collision, in the absence of proof to the contrary, is deemed to have been caused by his wrongful act, neglect, or default; and he is deemed guilty of a misdemeanour, for which his certificate may be cancelled or suspended.

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[1] *The Ulster*, 6 L. J. *n. s.* 736. [2] *The Ticonderoga*, 1 Swabey, 215.
[3] *The Seine*, 5 Jur. *n. s.* 298.

It frequently happens, in cases of collision, that there is a great disagreement in the evidence as to the real state of the facts,—the testimony of the witnesses being apt to be discoloured by their feelings, and the interest they take in the exculpation of their respective ships; and the evidence as to the vessel to which the fault may be imputed is, generally, to be received with a certain degree of caution, as being tainted, to some extent at least, with a degree of self-interest and self-pride,—and is, besides, usually accompanied with that uncertainty which arises from the confusion necessarily accompanying such an emergency. But the crew of the vessel charged with committing the fault are admitted as witnesses, on the ground of necessity, and as no other evidence can be expected.[1] And by the 13th article of section 282 of the Merchant Shipping Act, the particulars are to be entered in the official log. of "every collision with any other ship, and the circumstances under which the same occurred," and this entry has to be signed as directed by section 283.

When a collision is caused by natural causes alone, as by storm, or by the violence of the winds and waves, without the act of man, the rule is, that the damage must lie where it lights. If both ships are in fault, the rule is, that the whole damage sustained is to be borne equally by both ships. And when one of the ships only is in fault, the whole loss and damage to the other ship and cargo falls upon the wrong-doing ship. In regard to the latter, it has been held, that "the ship was liable into whose hands soever she had come, and when the amount of the damage is judicially ascertained by a proceeding against the ship, the lien (gage or hypothec) relates back to the period when it first attached, and takes priority (precedence and preference), to the *extent* of the then value of the vessel, of all other liens (as mortgages, &c.), and travels with the vessel wherever she goes, or into whose hands soever she passes."[2] Accordingly, it has been held, that the value of the wrong-doing ship is to be taken at what she would have brought if sold immediately before the collision, without deducting the expenses of sale; and, if she has been actually sold, her owners are accountable for *the gross proceeds* of the sale, without deducting Admiralty fees and disbursements.[3] And if the owner of the injured ship has obtained judgment for the damages sustained, but the owner of the wrong-doing ship is insolvent, he can proceed against the ship itself in Admiralty.[4]

When a collision happens "without the actual fault or privity (design) of the owners" of the wrong-doing vessel, and "where, by reason of the improper navigation of such ship, any loss or damage is caused to any other ship or boat, or to any goods, merchandise, or other thing whatsoever on board any other ship or boat," these owners are not "answerable in damages, to an aggregate (cumulated) amount exceeding £15 for each ton of the registered tonnage of their ship; nor, in respect of loss or damage to ships, goods, merchandise, or other things,—whether, in addition, there be loss of life or personal injury or not,—to an aggregate amount exceeding £8 for each ton of the ship's tonnage,—such tonnage to be the registered tonnage in the case of sailing ships, and, in the case of

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[1] *The Catherine of Dover*, 2 Hag. 145.
[2] Harmer *v.* Bell, 7 Moore's P. C. C. 267; 19 L. T. 235.
[3] Leycester *v.* Logan, 3 Kay and Johnston, 446.
[4] *The John and Mary*, 1 Swabey, 471.

steam-ships, *the gross tonnage,* without deduction on account of engine-room."[1]

Where the collision has been caused by the blame or misconduct of both vessels, the damages are, according to Lord Stowell's second rule, to be equally divided; and, in such case, the sum total of the joint damage is payable by the two in equal shares, as was authoritatively decided by the House of Lords in the Scotch case Hay *v.* Le Neve. And, therefore, when blame or misconduct of both the vessels have conduced to the collision, the whole damage sustained by both is payable by the two, in equal shares.[2] But though both ships be to blame, the owner of the cargo lost by the collision in one of the ships, not having any control over the blameworthy conduct of the master and mariners of that ship, is not considered as having any share in that blame; and, therefore, he has a claim upon the other vessel for the one-half of his loss.[3]

The last of the steering and sailing rules prescribed by the Merchant Shipping Acts Amendment Act directs, that "nothing in these rules shall exonerate (free or discharge) any ship, or the owner or master or crew thereof, from the consequence—(1.) of any neglect to carry lights or signals; or, (2.) of any neglect to keep a proper look-out; or, (3.) of the neglect of any precaution which may be required by the ordinary practice of seamen, or by the special circumstances of the case.

This regulation leaves the ship, and its owner, captain, and crew, to their liability at common law for the damages done, in consequence of any neglect (*i.e.*, carelessness, disregard, omission, or inattention) in regard to any of the matters therein specified. As,

1. In regard to carrying lights,—it has been held, that it is the duty of the person in charge of the vessel to show and keep up the light at the mast-head;[4] but the owner is not discharged from his responsibility.[5] Yet, a neglect of having this light at the mast-head will not prevent the vessel damaged from recovering damages, unless it be shown that the collision was occasioned by this neglect.[6] And where one vessel, by negligence, ran down another vessel at night, the mere circumstance of the injured vessel not having a light burning, in terms of the regulations, affords no excuse, where the want of the light does not, in any way, contribute to the accident.[7] But though it be a bright moonlight night, this does not relieve a sailing vessel hove-to from the duty of having a light burning.[8]

2. The absolute necessity of having a careful, attentive, and vigilant seaman in each watch, as look-out man, must be quite obvious; and it is not going too far to say, that many a collision might have been averted had there been a proper look-out; and not having a good look-out, or the look-out being inattentive to his duty, may bring an accident within the range of negligence; and, in a case of collision, it may often be of importance to show that one of the vessels had not a look-out.[9]

3. The last division of this rule separates into two heads:—the neglect of any precaution (forehanded care) required—(1.) by ordinary seamanship;

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[1] 25 and 26 Vict., cap. 63, sec. 54. [2] *The Milan*, 31 L. J. 105. [3] Ibid.
[4] General Steam Navigation Co. *v.* Morrison, 17 Jur. 673.
[5] *The Seine*, 1 Swabey, 411. [6] *The Vivid*, 1 Swabey, 88.
The Panther, 17 Jur. 1037. [8] Morgan *v.* Sim, 11 Moore, P. C. C. 307.
[9] *The North American*, 12 Moore, P. C. C. 332.

or, (2.) by the particular circumstances of each accident. One or two instances may illustrate each :—As,

1. Every vessel is bound, where she can fitly do so, to take the necessary precaution for avoiding a collision, though the other vessel may be doing wrong.[1] And it has been held, that a ship, in bad weather, and lying windbound with a number of ships in the Downs, was to blame in having neglected to send down her top-gallant and main-royal yards, and also her short fore and mizzen-top-gallant masts, which was the cause of the damage; and this being the joint fault of the pilot and the captain, the owners were not discharged.[2] It is the business of the captain to have his ship in ordinary safe trim; and if the ship is thus in ordinary safe trim, the owners are not liable in case of a collision when the ship is in charge of a qualified pilot, though she might have been in handier trim, and though the collision be owing in part to this trim; but, if the ship is not in ordinary safe trim, and the collision is in any degree caused thereby, the owners are liable, though a licensed pilot is in charge.[3]

2. When there has been a neglect of any precaution the particular situation of his ship demanded,—as, for instance, where a vessel close-hauled on the port tack and a steamer towing a large ship were standing, in the daytime and in the open sea, so as to cross each other's bows, the steamer being on the sailing vessel's lee beam,—and a collision having happened;—as a steamer towing has not to give way to sailing vessels as has a steamer *not towing*:—it was held, that the sailing vessel was to blame for holding her reach, and that the steamer was, in like manner, to blame for not taking any timeous step to keep clear of collision.[4] It has also been held, that a steamer going, in a frequented channel, at night, ten knots an hour, and, when a sail was seen half a mile off, three points on her port bow, having then ported her helm, but not having also eased her engines,—and a collision followed,—was to blame for this collision, in not having eased or stopped her engines on making out the other vessel, and continuing so improper a rate of speed.[5] And a large steam-ship, in proceeding up the Pool (in the Thames) in charge of a licensed pilot at nearly high tide, was going at a speed dangerous to small craft, and caused such a swell as sunk a coal-laden barge:—it was held, that the steamer was to blame, as this swell was caused by the speed at which she was going.[6]

The following are the recognised rules of the sea:—1. A vessel having the wind free is to give way to a vessel close-hauled; and a steam-ship, being always to be treated as going free,—*i.e.*, as a vessel having the wind free,—is bound to give way to a vessel close-hauled. 2. A vessel close-hauled, though not bound to give way to a vessel having the wind free, is bound to take the proper precautions,—*i.e.*, showing a proper and sufficient light, in sufficient time to enable the steam-ship, or other vessel whose duty it is to give way, to avoid a collision; and, 3. A vessel at anchor is bound to show the regulation lights (Art. 7, *ut ante*), so as to afford the vessel whose duty it is to avoid her the means of doing so.[7]

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[1] *The Commerce*, 3 W. Rob. A. R. 287.
[2] Hammond *v.* Rogers, 7 Moore, P. C. C. 160. [3] *The Argo*, 1 Swabey, 462.
[4] *The Arthur Gordon* and *The Independence*, 1 Lushington, 270.
[5] *The Despatch*, 1 Swabey, 138.
[6] Netherlands Steamboat Co. *v.* Styles, 9 Moore, P. C. C. 286.
[7] *The Saxonia* and *The Eclipse*, 9 Jur. *n.* s. 315.

By the last head of section 282 of the Merchant Shipping Act, of "every collision with any other ship, and the circumstances under which the same occurred," an entry has to be made in the official log-book; and this entry has to be signed by the captain and by the mate, or some other of the crew. In regard to steam-ships, section 328 requires, that, "in every case of collision, in which it is practicable so to do, the captain shall immediately after the occurrence (event) cause a statement (a detailed account of the whole facts) thereof, and of the circumstances under which the same occurred (took place), to be entered in the official log-book," and "to be signed by the captain and by the mate or one of the crew, and in default (in case of failure), he, the captain, incurs a penalty not exceeding £20." And section 28 of the Amendment Act, 1862, enacts, that "in case any damage to persons or property arises from the non-observance (disregard, want of due attention) by any ship of any regulations made by or in pursuance of the Act,—such damage shall be deemed (held and judged) to have been occasioned by the wilful default (failure or omission) *of the person in charge of the deck of such ship at the time*, unless it is shown" "that the circumstances of the case made necessary a departure (departing, going aside) from the regulation."

IV.—CASTING GOODS OVERBOARD.

It has been a very ancient practice of mariners, when the ship has been in a storm or tempest, to throw overboard part of the cargo, for the purpose of easing or lightening their ship; and the practice of the once celebrated island of Rhodes, in the eastern Mediterranean, was adopted by the Roman Emperor Justinian, in the Pandects, under the title "*Of the Rhodian law about throwing goods overboard*," of which the rule is:—"What has been given for or on account of all, must be made good by the contribution of all."[1]

This rule has been adopted, with more or less variation, in all the maritime countries of Europe, and the contribution thus made is termed *general average*, which will be afterwards considered. Here have to be considered—the cause of throwing overboard; the goods, &c., thrown overboard; and the manner of throwing over.

1. *The cause of throwing overboard.*—It is plain that the ship, otherwise quite seaworthy, must be in an imminent and impending danger from the violence of the wind and waves; but, if the ship has been, at first, so overloaded as to be incapable of encountering the usual winds and storms, and goods have to be thrown overboard in order to lighten her and make her seaworthy,—this loss will not be a subject for general contribution.

Necessarily, there will be some consultation, though short, no doubt, among the captain, the mates, and the senior members of the crew (*des principaux de l'equipage*), as to the propriety of casting part, and how much, of the cargo overboard; and the result of this consultation will likely be carried out. The merchant freighters do not now accompany their goods; but if a supercargo be on board, his advice will be of much importance; and, in any case, the course appearing the more feasible to the most part, will be, at all events, the most advisable to follow.

[1] Dig., lib. xiv. art. 2, s. 1.

2. *The goods, &c., thrown overboard.*—When practicable, common sense says that the bulkiest and heaviest articles of the cargo evidently should be first thrown over; but, as these are commonly deep in the hold, and out of reach, the first and readiest are seized and ejected. It is no doubt a good rule, if it could be put in practice, that "the articles the less necessary, the more weighty, and of less value, are" to be "thrown over the first;" but, in the face of imminent danger, there is no time for deliberation or selection, which, if stated to have taken place, only tends to throw doubt upon the actual immediateness of the represented danger. However, it is the general rule, that goods laden on deck, being so much hindrance and obstruction to the due working of the ship, are the readiest to be thrown over; and, in such case, these goods do not share in the general contribution,—the general average,—unless it is proved that the goods were so placed according to the known and uniform usage of the trade, and with the knowledge and consent of the freighter. Then the value of these goods is made up by general average; and if their owner knew they were so laden, or that their being so laden was according to the known usage of the particular trade, he has no claim for their value against the captain or shipowner. And it has been held that, under a policy in the ordinary form, the underwriters, by usage and custom, are not liable to general average on account of the throwing over of any timber stowed upon deck.[1]

3. *The manner of throwing goods overboard.*—There can be little doubt that this is most frequently done in hurry and confusion, when the exigency of the moment will not allow the observance of formalities or selections; but, when the hand of every one is most eagerly casting over what it can find, yet the eye of the captain must be over the whole, and his commands must regulate and control all, so as to preserve the lives of all, and the safety of the other goods. Having regard, therefore, to the particular position of the ship at the time, and to the urgent necessity for immediately lightening her, the captain will have little room for selecting the readiest and the most expeditious manner of accomplishing this. And, in effecting the lightening, the eye will naturally turn to such goods or articles which are bulkiest, heaviest, and the most burdensome and troublesome, and which may tend, more or less, to the labouring of the ship, or to her incapability of riding through the storm. It is unnecessary to say, that these must be sacrificed without the least regard to value, quality, or ownership.

In effecting this sacrifice, the damage done to the ship also falls upon the general contribution;—as, for instance, cutting and injuring the bulwarks, decks, or sides, and cutting, destroying, slipping from, and abandoning masts, yards, sails, anchors, cables, &c., for the general safety; provided it be satisfactorily shown that these have been really and necessarily sacrificed in the hour of need and of danger.

The Roman law, already referred to, provided, that "if a mast, or other implement of a ship, is cast or thrown out or away, for the purpose of removing a common danger, contribution is due."[2] And *L'Ordonnance de la Marine* appoints, that "the cables and masts destroyed or cut, the anchors and other furniture abandoned, for the common safety," "are gross and common," (Art. 6). The *Code de Commerce*, art. 400, has the same

[1] Miller *v.* Tetherington, 6 H. and N. 278.

[2] Dig., lib. xiv. art. 2, s. 2.

words; and Valin observes: "All that may be valued, in the meaning of the article, that is, all that may be done for the common safety;" but, "if it has not been done in order to facilitate the jettison" (throwing over), "there will not be any contribution made on account of damage happening to the vessel." And if, in order to this throwing over, or while doing so, or as a consequence of it, other goods in the vessel are destroyed or receive damage, their value, or the damage sustained, falls upon the general average.[1]

But if the ship and the cargo remaining on board are not saved by this throwing overboard, and the ship and cargo are lost in the same storm, these will not be liable to payment or reparation of those which have been thrown over or damaged;[2] or if, in continuing her course, the ship happens to be lost from another and a separate cause, the effects saved from this shipwreck will contribute to the throwing over, on the footing of their value in the condition in which they shall be found, deducting the expense of salvage.[3] Of course, if the cargo be also lost with the ship, no contribution can be made.

These rules have been adopted in this country; and the contribution for the value of the goods and articles that have been thus jettisoned for the safety of all has to be considered under the head of GENERAL AVERAGE.

The property of the goods and articles thus ejected continues in the original owners; and, if they have been distinguished by any impressed marks, and are of a kind that will float, the captain, if he puts into a neighbouring port, ought to make it publicly known that such and such goods and articles were cast over from a certain ship at or about such a locality; and, if washed ashore and found, and returned to the British consul, or to a certain named person, a suitable salvage reward will be given.

At any rate, the captain must enter in the ship's official log a full and particular narration of the whole circumstances attending the throwing over,—as, the state of the weather, the direction of the wind, the state of the sea, and condition of the ship, and every particular preceding, during, and following the jettison; and on the arrival of the ship at the first port, or at her port of destination, the captain makes a regular protest, in which is embodied the particulars in the official log; and he sends certified copies of this protest to his owner and to the shipper of the jettisoned goods.

V.—SALVAGE AND TOWAGE.

The term *salvage* is very commonly applied to the salvage *services* performed, and to the salvage *reward* for such services,—though, strictly speaking, this term means merely the reward granted for saving effects. But it is proposed here to consider—1. SALVAGE, in both meanings; 2. DERELICT; and, 3. TOWAGE.

1.—*Salvage.*

The term *salvage*, then, as here applied, will mean, both the salvage services actually performed, and also the allowance or compensation which has

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[1] 2 Valin, liv. iii. tit. viii. [2] Ibid. p. 525. [3] Ibid.

to be made to those persons by whose labour and exertions, or by whose assistance, the ship or cargo has been saved from wreck or imminent danger, or recovered after actual loss.

1. Salvage services are those which are afforded, in imminent peril and danger, to ships and their cargoes in distress, and by which these are extricated and relieved from the peril and danger, and brought into a place of safety.[1] These services are not merely work and labour, but other circumstances are to be adverted to,—the general interests of navigation and the commerce of the country,—to encourage exertion, and to excite to risk and peril in the relief of lives and property in danger. And it is not a mere question of work and labour only,—not a mere calculation of hours, though time is undoubtedly an ingredient;—but there are various circumstances,—as, the state of the weather,—the degree of damage and danger to the ship and cargo,—the risk and peril of the salvors,—the time employed,—the value of the property;—and, when these are all considered, there is still another principle,—to encourage enterprise,—to reward exertion,—and to be liberal in all that is due to the general interests of commerce, and the general benefit of owners and underwriters,—even though the reward may fall upon an individual owner with some severity.

So the ingredients of a salvage service have been stated to be:—1st, Enterprise in the salvors, in going out in tempestuous weather to assist a vessel in distress,—risking their own lives to save their fellow-creatures, and to rescue the property of their fellow-subjects. 2d, The degree of danger and distress from which the property was rescued, whether it was in imminent peril, and almost certainly lost, if not at the time rescued and preserved. 3d, The degree of labour and skill which the salvors incur and display, and the time occupied:—and, lastly, the value. Where all these circumstances concur, a large and liberal reward ought to be given;—but, where none or scarcely any take place, the compensation can hardly be denominated a salvage compensation; it is little more than remuneration for work and labour.[2]

Thus, the salvors are bound to exercise sufficient skill in the performance of the service they have undertaken; and the salvors having brought the vessel to a place of safety, is usually held as good evidence of their having done so,—though the salvors are not obliged to go out of their way to any port the assisted parties may name,—and, while engaged in the salvage service, the salvors have a right to be maintained from the ship's stores.[3] When a vessel, out at sea beyond the bounds of pilotage ground, requires assistance to conduct her to a place of safety,—this is salvage,—not pilotage.[4] And when a ship has been thus assisted to a place of safety,—to a roadstead,—she is not to be removed without the consent of the salvors.[5] So, when the salvors are in possession of the vessel for which their services have been accepted, and they can execute what they have undertaken with skill and activity, and with safety to the vessel,—it is not proper for other persons to interfere with them.[6] And no salvage benefit can be obtained by the parties so foisting themselves in,

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[1] *The Atlas*, 8 Jur. *n. s.* 753.
[2] *Per* Sir John Nicholl, in *The Clifton*, 3 Hag. 121.
[3] *The Houthandel*, 1 Eccl. and Adm. Rep. 22.
[4] *The Hedwig*, 17 Jur. 977.
[5] *The Nicolai Heinrich*, 17 Jur. 324.
[6] *The Glory*, 14 Jur. 676.

for any portion of ship and cargo they may save, but such belongs to the proper salvors.[1]

The manner in which assistance has been afforded is a matter of importance in ascertaining the amount of the reward. Readiness and promptness must be used in obeying a signal of distress, and expedition in arriving at the object of disaster, as well as activity and diligence in saving the lives and rescuing the ship and cargo from danger;[2] but if the signal for a pilot is taken to be a signal of distress, parties setting out to the signalling ship are not entitled to salvage reward, when the actual condition of the ship showed that the signal was for a pilot only.[3] But where the salvors made great exertions to save ship and cargo, but were compelled, with her crew, to leave her, and she was afterwards found and saved by a steamer:—it was held, that, under the circumstances, the original salvors were entitled to salvage reward.[4] And it has been held, that exertions to give assistance to a ship in distress are to be rewarded, as being in the nature of salvage services, though the ship received no benefit from them, if she is otherwise saved.[5] When, however, a ship in distress takes the services of strange hands, these services are in the nature of salvage services, though the work done may have been of no great difficulty or importance.[6] And if salvage has actually been afforded to a ship, she cannot refuse to pay for that service, merely because she neither requested nor expressly accepted assistance:—the question being,—whether the circumstances were such, that, if an offer had been made, a prudent man would have accepted it.[7]

But should the salvors resist the employment of a steam-tug in the salvage service, this will be held such misconduct by them as forfeits their claim to any salvage reward.[8] Wilful misconduct operates as a total forfeiture of any salvage reward,—which misconduct must be proved by the party who makes that charge; but mistake or misconduct, other than criminal, but which diminishes the value of the property salved, and occasions expense to the owners, is to be taken into account in awarding salvage compensation,—though, when the salvage is finally accomplished, no mere mistake or error of judgment in the manner of procuring it, and no misconduct, short of that which is wilful, and may be considered criminal, will produce an entire forfeiture of salvage.[9] Though, when the salvors, by their wrong treatment, have greatly damaged the property, a deduction is to be made from the salvage reward they would otherwise have earned, as a compensation for the additional damage thus done.[10] And in a case where no danger was incurred by the asserted salvors, and the captain and crew of the vessel were not aware of the existence of any danger, but accepted the services of a steamer to bring them into port, and an offer was made for such services of the usual amount of towage,—it was held, that such services did not amount to salvage services, and affirmed the offer made, with costs.[11]

Steam vessels are important agents in salvage services, which, when

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1 *The Fleece*, 2 W. Rob. Ad. R. 278.
2 *The Clifton*, *ut sup.*
3 *The Little Joe*, 1 Lushington, 88.
4 *The E. U.*, 1 Eccl. and Ad. Rep. 63.
5 *The Undaunted*, 1 Lushington, 90.
6 *The Bomarsund*, 1 Lushington, 77.
7 *The Golden Light*, 5 L. T. *n. s.* 37.
8 *The Martha*, 1 Swabey, 480.
9 *The Atlas*, 8 Jur. *n. s.* 753.
10 *The Magdalen*, 5 L. T. *n. s.* 807.
11 *The Harbinger*, 16 Jur. 792.

performed by such, are looked upon with great favour, and their owners will be adequately rewarded for such.[1] Services performed by a steamer to a disabled vessel can never be considered as mere towage;[2] but additional remuneration will be allowed, on account of the great skill and the great power of these vessels.[3] Where a Government steamer assists a merchant vessel, under a stipulation to reimburse all expenses arising to the steamer and stores,—it has been held, that such a stipulation is no bar to a claim for salvage remuneration by the officers and crew who perform essential service.[4] And when a steamer was hired for towing a vessel, in a most helpless state, and in most imminent danger, to a place of comparative safety, the stipulated hire to the steamer will be the citerion for the salvage remuneration.[5] And, where a ship had, in distress, parted from both her anchors at the North Foreland, and had thereupon engaged a steamer to go to Ramsgate and bring off an anchor and chain, which the steamer got on board two luggers; and these three were occupied three days in looking for the ship in distress; at length the steamer fell in with the ship, but she was not then in imminent distress, and the steamer towed her into Gravesend, where the luggers afterwards arrived with the anchor and chain, which the captain of the ship then refused to accept:—it was held, that the original order to the steamer included a direction to take all necessary measures for carrying out that order, and that the steamer and the luggers were entitled to salvage remuneration for the whole of their endeavours.[6]

And when a ship, having been abandoned at sea, was taken possession of by the crew of a small schooner, and after being, for some time, towed by the schooner, the ship was taken possession of by several men from the steamer *President*, which had been hired by the underwriters on ship and cargo for the purpose of salving the ship, which was brought by these men into Liverpool:—it was held, that the schooner was entitled to salvage as first salvors;—that, looking to the danger of the ship, and the small size of the schooner, the steamer was justified in taking possession of the ship, and that the hirers of the steamer were entitled to salvage.[7] But when the salved ship, having been taken by the salving steamer into Bridlington Bay, took the ground as she was going into the harbour:—it was held, that it was wrong in attempting to take a vessel of such size into the harbour, and that, on this account, a deduction required to be made from the salvage reward they would otherwise have received.[8]

When the ship in distress is in charge of a pilot, a steam-tug engaged in performing salvage services is generally bound to follow the directions of the pilot.[9] And where a steamer had been in considerable danger in performing a salvage service:—it was held, that, after deducting a sum for repairs and detention, the owner was only entitled to a half of the remainder of the whole sum awarded for the salvage service,—the other half to the captain and crew.[10]

But frequently an agreement is made for the services to be performed between the captain of a vessel in distress and offering salvors,—and,

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1 *The Alpen*, 1 Swabey, 189.
2 *The Charles Adolphi*, 1 Swabey, 153.
3 *The Rakes*, 1 Hag. 246.
4 *The Lustre*, 3 Hag. 154.
5 *The Traveller*, 3 Hag. 370.
6 *The Undaunted*, 1 Lushington, 90.
7 *The Pickwick*, 16 Jur. 669.
8 *The Gerla*, 1 Swabey, 230.
9 *The Minnehaha*, 1 Lushington, 335.
10 *The Spirit of the Age*, 1 Swabey, 286.

where such an agreement is distinctly made out, it will be sustained, unless it be entirely unjust, and not because it has turned out to be a hard bargain.[1] And if such an agreement as to the remuneration for salvage services is according to what is fair and right, it binds the owners,[2] unless it is proved to be very unreasonable, and to have been procured by fraud or force;[3] but such an agreement, dishonestly made by the captain of a ship, to provide an excessive salvage reward to supposed salvors, is not effectual against the owner of the ship.[4] And when an agreement as to salvage services is founded on, the party founding upon such an agreement must prove it, and, unless it is clearly established by the evidence, it will not be given effect to.[5] But when the captain of a ship in distress has agreed with the salvors to pay them a certain sum for their services, this agreement will be held good against the salvors, unless fraud (*i.e.*, trick, deceit, cheating) be proved against the captain.[6] And when, under an agreement for their services, salvors have endeavoured to execute these services, but if this is rendered impossible by the act of God (*i.e.*, the violence of the wind and waves, storms, &c.), these services will be rewarded, though the ship receive no benefit from them.[7] So where a foreign vessel, leaky and in boisterous weather, engaged a fishing-smack, by a written bargain, "to pilot and sail ahead for £50;" and, after four days' boisterous weather, the vessel was got into port:—it was held, that this, being an agreement to perform a certain service for a fixed sum, was not to be set aside, because the weather became tempestuous, and the vessel was longer in arriving at a port of safety than might have reasonably been expected,—as nothing happened to change pilotage service into a salvage service, and that the agreed-on sum was sufficient.[8]

If services are rendered by a fishing-vessel and fishermen to a vessel at sea, beyond pilotage ground, which requires to be guided to a place of safety,—this guidance is salvage, and not pilotage; but there is not to be included in the reward for these services a compensation for the possible profit on the loss of their fishing, unless they clearly state their intention of claiming such before their services are accepted.[9] And when the property salved was not exposed to threatening danger, the possible profit of their fishing is not to be included in their salvage reward.[10] Thus, where the masts of a timber-laden ship had been cut away, and she was making much water, though, from her being timber-laden, in no danger of sinking; and services which, in reality, were merely towage services, were afforded by five fishermen, with their fishing-smack of sixty tons, and their claim included sums for loss of fishing and damage to a hawser; but an agreement had been made between them and the captain of the ship that they should receive £150 for their services (thirty-six hours). This being considered fair and just, the court found accordingly, with costs.[11] And when a fishing-smack is actually taken away from profitable employment to afford salvage service, her having been so taken away will form an important consideration in fixing the salvage reward, though, if not so engaged, what they *might* have earned will not be considered.[12] But if

1 *The Firefly*, 1 Swabey, 240.
2 *The Arthur*, 6 L. T. *n. s.* 556.
3 *The Helen and George*, 1 Swabey, 368.
4 *The Theodore*, 1 Swabey, 351.
5 *The Resultatet*, 17 Jur. 353.
6 *The Henry*, 15 Jur. 103.
7 *The Undaunted*, 29 L. T. 176.
8 Halsey *v.* Albertuszen, 11 Moore, P. C. C. 313.
9 *The Hedwig*, 17 Jur. 977.
10 *The Nicolai Heinrich*, 17 Jur. 329.
11 *The Arthur*, 6 L. T. *n. s.* 556.
12 *The Louisa*, 3 W. Rob. 99.

the fishermen are not themselves personally present at the time of the salvage service, they will have no claim as salvors;—only, if their boats have been used therein, some reward will be granted for their use.[1]

Cases may occur in which pilots may be entitled to salvage; but they must be cases of extraordinary circumstances, and of extreme danger and personal exertion, as a pilot is not bound to go on board a vessel in distress, and render his services for mere pilotage.[2] When salvage is due to pilots at all, in a fair case of extraordinary danger, personal exertion, and hazard, it is of great importance that the allowance be liberal, encouraging persons, ready on the water and fearless of danger, to interpose for the safety of ships and property.[3] Guidance of a vessel out at sea, requiring assistance, to a place of safety, is not pilotage, but salvage service, when rendered beyond the usual limits of pilotage ground.[4] And where a vessel has been so assisted into a roadstead, it is not necessary that the salvors remain on board in order to maintain their rights, as she is not to be removed thence without the consent of the salvors.[5] But where pilots do not make fair trial to get off to a vessel in distress during two days, when there might have been danger and difficulty, but went off on the third, when there was no danger, and when the weather was moderate and fair for the harbour, the service then rendered amounts to pilotage only, and is not salvage.[6] And though a party may have been employed as a pilot, yet, if he has had to perform proper salvage services, he will not be rightly remunerated for these services by mere pilotage dues.[7]

In general, the crew of the vessel and the passengers on board are not entitled to claim salvage remuneration for the services rendered by them to that vessel when in distress, where they have laboured for the common safety of themselves as well as others,—it being the *duty* of all on board, in such circumstances, to contribute their aid.[8] But circumstances may arise which may entitle the crew, and also the passengers, to claim salvage remuneration for services rendered on such an occasion. As where a vessel was, by order of her captain, abandoned at sea, and next day her crew, who had been taken to Vigo, were, by order of the British consul there, put on board a steamer which fell in with the abandoned ship;—part of the crew volunteered to return to their ship, but without the captain, and were accordingly put on board by the steamer, and, with the assistance of a smack and other boats, the vessel was subsequently brought to Corunna:—it was held that the crew were to be rewarded as salvors.[9] So, in the case of the crew's separation from the ship,—as the engagement of the seamen is thereby at an end,—any subsequent exertions, successfully made by them, to recover the ship, will entitle them to salvage remuneration.[10] And the crew of another wrecked vessel, taken on board rather as passengers than as part of the crew, are entitled to some reward for their salvage services.[11]

To entitle parties to claim as joint-salvors, there must have been an actual, or at least an apparent, necessity for their interference; and to entitle a second set of salvors to interfere and claim remuneration, they must

1 *The Charlotte*, 3 W. Rob. 68.
2 *The Joseph Harvey*, 1 Rob. 306.
3 *The Sarah*, 1 Rob. 31.
4 *The Hedwig, ut sup.*
5 *The Nicolai Heinrich, ut sup.*
6 *The City of Edinburgh*, 2 Hag. 333.
7 Halsey, *ut ante.*
8 *The Vrede*, 1 Lushington, 322.
9 *The Florence*, 16 Jur. 572.
10 *The Beaver*, 3 Rob. 292.
11 *The Salacia*, 2 Hag. 269.

prove either an adoption of their services, or incompetency in the first salvors.[1] Thus, where salvors were engaged in salvage service, with the consent and sanction of the captain, but were disturbed in their salvage operations, and dispossessed of the vessel, by persons illegally intruding themselves into the service:—it was held, that no salvage benefit could arise to the parties so intruding themselves, for any portion of the ship or cargo they might save, but the salvage will be to the benefit of the original salvors.[2] Where, as before noticed, a ship abandoned at sea was taken possession of by a small schooner, and, after being towed some time by the schooner, she was boarded and taken possession of, and towed into Liverpool, by several men from the *President* steamer, which had been hired by the underwriters on the ship and cargo for the salvage service:—it was held, that the schooner was entitled to salvage as first salvor;—that the steamer, looking to the danger of the ship, and small size of the schooner, was justified in taking possession of the ship; and that the persons hiring the steamer were entitled to salvage, as owners for the time.[3] And where salvors, having made great exertions to save a ship and cargo, were at length, with her crew, compelled to abandon her; but she was afterwards found and saved by a steamer:—it was held, that the original salvors were entitled to a salvage reward under the circumstances.[4] But a first set of salvors have no right in themselves, while the captain is in command, to interfere with further assistance, and to attempt to exclude this further assistance; and such misconduct diminishes their title to salvage.[5] And where one set of salvors did only mischief, and another set had done beneficial salvage services, the claim of the former was dismissed, and the latter alone were found entitled to salvage reward.[6] The merely giving of information, even to a foreign ship, as to her actual position (her true lat. and long., *e.g.*), is not a salvage service.[7] Yet an agent of Lloyds at an outport can claim as a salvor when he, as such agent, has engaged to relieve the vessel from her difficulties, and has engaged the necessary means to perform the salvage services, without his having incurred any personal risk.[8] And if, in a towage service, the steam-tug, by the breaking of the hawser, is laid under a risk, and has to perform duties beyond the intention of the original bargain,—this entitles the steam-tug to salvage reward.[9]

In salvage cases, the officers of the Royal Navy have no right to interfere and dispossess the original salvors, without reasonable cause for such interference;—as, where the latter show their unfitness to be in charge of valuable property,—or have been guilty of gross misconduct; and, in such cases, the interference of these officers may not only be justifiable, but laudable.[10] But where two fishing-boats had taken possession of a vessel abandoned by her crew, and were towing her into port; and a gunboat came up about an hour afterwards, ordered off the fishermen, and took the vessel in tow:—it was held, that there being no necessity for such interference to secure the safety of the vessel, the gun-brig had no claim to salvage.[11]

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1 *The Eugene*, 3 Hag. 156.
2 *The Fleece*, 3 W. Rob. 278.
3 *The Pickwick*, 16 Jur. 669.
4 *The E. U.*, 1 Eccl. and Ad. R. 63.
5 *The Dantzic Packet*, 3 Hag. 383.
6 *The Neptune*, 1 W. Rob. 297.
7 *The Little Joe*, 6 Jur. *n. s.* 783.
8 *The Purissima Concepcion*, 3 W. Rob. 101.
9 *The Minnehaha*, 1 Lushington, 335.
10 *The Blenden Hall*, 1 Dod. 414.
11 *The Maria*, 1 Edw. 175.

Yet, from the enactments to be afterwards noticed, useful salvage services can be afforded to distressed merchant ships by the officers and men of the Royal Navy. For important services, personal risk, and labour encountered in salvage service, the officers and crew of Government ships are entitled to remuneration, upon the same footing as other salvors;[1] and when any of the officers and seamen undergo personal risk and labour in affording these salvage services, they will receive salvage reward,[2]—for which a larger proportion will be given, when the salved property is of great value,—it being kept in mind, that their own property is not risked.[3]

It is enacted by section 484 of the Merchant Shipping Act, 1854, that where salvage services are rendered by any ship belonging to Her Majesty, or by the commander or crew thereof, no claim shall be made or allowed for any loss, damage, or risk thereby caused to such ship, or to the stores, tackle, or furniture thereof, or for the use of any stores or other articles belonging to Her Majesty, supplied in order to effect such services, or for any other expense or loss sustained by Her Majesty by reason of such services. And no claim whatever, on account of any salvage services rendered to any ship or cargo, or to any appurtenances of any ship, by the commander or crew, or part of the crew, of any of Her Majesty's ships, shall be finally adjudicated upon, unless the consent of the Admiralty has first been obtained, such consent being to be signified by writing under the hand of the Secretary of the Admiralty; and if any person who has originated proceedings in respect of any such claim fails to prove such consent to the satisfaction of the court, his suit stands dismissed, and he must pay all the costs of such proceedings. But any document, purporting to give such consent, and to be signed by the Secretary to the Admiralty, is *prima facie* evidence of such consent being given.[4]

Whenever services, for which salvage is claimed, are rendered to any ship or cargo, or to any part of any ship, or to any appurtenances of any ship, *at any place out of* the United Kingdom, and the four seas adjoining thereto, by the commander or crew, or part of the crew, of any of Her Majesty's ships, the property alleged to be salved must, if the salvor is justified by the circumstances of the case in detaining it at all, be taken to some port where there is either a consular officer (consul-general, consul, or vice-consul, or any person for the time being discharging the duties of consul-general, consul, or vice-consul), or a Vice-Admiralty Court; and, within twenty-four hours after arriving at such port, the salvor and the captain, or other person in charge of the property alleged to be salved, must each deliver to the consular officer or Vice-Admiralty judge there a statement, verified on oath, specifying, as far as they respectively can, and so far as the particulars required apply to the case:—

1. The place, condition, and circumstances in which the ship, cargo, or property was, at the time when the services were rendered, for which salvage is claimed.

2. The nature and duration of the services rendered.

And the salvor must add to his statement:—

3. The proportion of the value of the said ship, cargo, and property,

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[1] *The Rapid*, 3 Hag. 419.
[2] *The Wilsons*, 1 W. Rob. 172.
[3] *The Earl of Eglinton*, 1 Swabey, 7.
[4] Sec. 485.

and of the freight, which he claims for salvage, or the values at which he estimates the ship, freight, and cargo respectively, and the several amounts that he claims for salvage in respect of the same.

4. Any other circumstances he thinks relevant to the claim.

And the captain or other person in charge of the ship, cargo, or property, must add to his statement:—

5. A copy of the certificate of registry of the ship, and of the endorsements thereon, stating any change which (to his knowledge or belief) has occurred in the particulars contained in the certificate; and stating also, to the best of his knowledge and belief, the state of the title to the ship for the time being, and of the encumbrances and certificates of mortgage or sale, if any, affecting the same, and the names and places of business of the owners and encumbrancers.

6. The name and place of business or residence of the freighter (if any) of the ship, and the freight to be paid for the voyage she is then on.

7. A general account of the quantity and nature of the cargo at the time the salvage services were rendered.

8. The name and place of business or residence of the owner of the cargo, and of the consignee thereof.

9. The values at which the captain estimates the ship, cargo, and property, and the freight, respectively; or, if he think fit, in lieu of the estimated value of the cargo, a copy of the ship's manifest.

10. The amounts which the captain thinks should be paid as salvage for the services rendered.

11. An accurate list of the property saved, in cases where the ship is not saved.

12. An account of the proceeds of the sale of the ship, cargo, or property, in cases where the same, or any of them, are sold at the aforesaid port.

13. The number, capacities, and condition of the crew of the ship at the time the services were rendered.

14. Any other circumstances he thinks relevant to the matter in question.

15. A statement of his willingness to execute a bond, in the form in the table marked W in the Schedule annexed to the Act, in such amount as the consular officer or Vice-Admiralty judge may fix.[1]

Within four days after receiving these statements, the consular officer or judge (as the case may be) fixes the amount to be inserted in the bond, at such sum as, to the best of his judgment, he thinks sufficient to answer the demand for the salvage services rendered; but such sum must not exceed *one half* of the value which, in his estimation, the ship, freight, and cargo, or any parts thereof, in respect of which salvage is claimed, are worth; and if either of the above statements is not delivered to him within the time required, the consular officer or judge may proceed on the one so delivered to him, but in no case requiring the cargo to be unladen. In any proceeding relating to salvage, the consular officer can take affidavits and receive affirmations.[2] He then sends notice of the sum he has fixed to the salvor or captain; and upon the latter or said other person granting that bond with that sum inserted therein, in presence of the officer or judge (who attests the same), and delivering the same to the salvor, the

[1] Sec. 486. [2] Sec. 487.

right of the salvor to retain possession of the ship, cargo, or property, or any of them, in respect of the salvage claim, ceases.[1] But if the ship, cargo, or property, for which the salvage is claimed, is not owned by persons in Her Majesty's dominions, the right of the salvor to detain or retain possession thereof does not cease, unless the captain or other person in charge procures, in addition to the bond, such security for performance of the conditions thereof as the consular officer or judge considers sufficient, and places the same in the possession or custody of that officer or judge, or, if the salvor so desires, in the possession or custody of the officer or judge, jointly with any other person whom the salvor appoints for the purpose.[2] And the consular officer or judge, at the earliest opportunity, transmits the statements and documents so sent him, and a notice of the sum he has fixed as salvage, to the High Court of Admiralty of England, or, if the salvor or captain, or other person in charge, agree that the bond shall be adjudicated upon by any Vice-Admiralty Court, to such court.[3]

This bond is to be adjudicated on and enforced by the High Court of Admiralty in England, or, if the salvor and master, at the time of the execution of the bond, agree upon any Vice-Admiralty Court, then by such Vice-Admiralty Court; and, in every proceeding under the Act, such Vice-Admiralty Court has, and can exercise, all powers and authorities whatsoever which the High Court of Admiralty now has, or at any time may have, in any proceeding before it. In cases where any security for the due performance of the conditions of the bond has been placed in the possession or custody of the consular officer or Vice-Admiralty judge, or any such officer or judge jointly with any other person, they respectively deal with such security in such manner as the court that adjudicates on the bond directs.[4] The High Court of Admiralty has power to enforce any bond given in pursuance of the Act, in any Vice-Admiralty Court in any part of Her Majesty's dominions; and all courts in Scotland, Ireland, and the islands of Jersey, Guernsey, Alderney, Sark, and Man, exercising Admiralty jurisdiction, must, upon application, aid and assist the High Court of Admiralty in enforcing such bonds.[5] But if any salvor of any ship, cargo, or property, does not proceed under the Act, he cannot detain the ship, cargo, or property, but may proceed otherwise for his salvage claim, as nothing in the Act abridges or affects the rights of salvors except in the cases provided for.[6]

When services for which salvage is claimed are rendered by the commander or crew, or part of the crew, of any of Her Majesty's ships, or of any other ship, and the salvor voluntarily agrees to abandon his retention of the ship, cargo, and property salved, on the captain or other person in charge entering into a written agreement (not liable to stamp-duty) to abide the decision of the High Court of Admiralty, or of any Vice-Admiralty Court, and thereby giving security, to such amount as may be agreed on, such agreement binds the ship and the freight payable respectively, and the respective owners of the ship and freight for the time being, and their respective heirs, &c., for the salvage to be adjudged payable in respect of the said ship and freight respectively, to the extent of the security; and such an agreement can be enforced in the same manner as salvage bonds for salvage services by Her Majesty's ships; and upon such an agreement

[1] Sec. 488. [2] Sec. 489. [3] Sec. 490. [4] Sec. 492. [5] Sec. 493. [6] Sec. 494.

being made, the salvor and the captain, or other person in charge, make such statements (not on oath) as are required by them in case of a bond being given; and so soon as practicable, the salvor must transmit the agreement and these statements to the court which is to adjudicate thereon.[1]

"Salvage for preserving the life or lives of any belonging to any ship or boat," stranded or otherwise in distress on the shore of any sea or tidal (tide-flowing or reflowing) waters within the limits of the United Kingdom, "shall be payable by the owners of the ship or boat, in priority to (before) all other claims for salvage; and when the ship or boat is destroyed, or its value is insufficient, after paying the actual expenses incurred, to pay the salvage for any life or lives, the Board of Trade may, in its discretion, award to the salvors of life or lives such sum or sums as it deems fit."[2]

And by the Admiralty Court Act, 1861, 24 Vict., cap. 10, sec. 9, all the provisions of the Merchant Shipping Act, 1854, in regard to salvage of life from any ship or boat within the limits of the United Kingdom, are extended to the salvage of life from any British ship or boat whensoever the services may have been rendered, and from any foreign ship or boat when the services have been rendered wholly or in part in British waters.

By these sections the preservation of human life is made a separate ground for salvage reward, and, when the property is insufficient, this salvage reward has a preference before all others,[3]—as the salvation of human life is always now taken into special consideration, and a corresponding reward granted.[4] And in granting this liberal reward, the extent of the risk and danger to which the salvors and the persons saved have been exposed forms an important consideration.[5]

Apart from any question as to the preservation of life, salvage services are to be remunerated on the rule of rewarding exertions which have been successful in saving property, but not rewarding exertions, however meritorious, which have not been successful to any extent.[6] And this rule is founded upon the plain common sense, that suitable rewards encourage the offering and the acceptance of sufficient salvage services, but extravagant demands discourage the acceptance of such services, and have the effect of preventing these being required to the aid of vessels in distress.[7] Therefore, when a salvage has been fully performed, those who have deservingly taken part in producing that end are entitled to share in the salvage reward, though the part they took, standing by itself, would not have produced it; but if the ship or cargo is not saved, there can be no salvage.[8] Wilful or criminal misconduct produces a total forfeiture of all salvage reward;[9] and, on this misconduct being satisfactorily established, salvors will forfeit, either wholly or in part, their right to salvage reward, according to the different degrees of misconduct.[10] Thus, when a wreck had been greatly damaged by the mistaken actings of the salvors in their treatment of it, compensation was deducted from the amount they would

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1 Sec. 497.
2 Secs. 458, 459.
3 *The Coromandel*, 1 Swabey, 205.
4 *The Bartley*, 1 Swabey, 198.
5 *The Eastern Monarch*, 1 Lushington, 81.
6 *The E. U.*, 1 Eccl. and Ad. R. 64.
7 *The Nemrod*, 14 Jur. 942.
8 *The Atlas*, 8 Jur. *n. s.* 753.
9 Ibid.
10 *The Charles Adolphe*, 1 Swabey, 153.

have otherwise deserved, and a smaller sum was allowed them, and the compensation deducted was proportioned according to the want of skill shown.[1]

As salvage is the reward payable to the salvors for the restoration of the property they have saved to its former owners, and especially for the risk and danger they ran, and for the useful services they have done to these owners, in rescuing that property from danger, so the persons on whom the payment of this salvage reward falls are those who would have suffered the loss had no rescue taken place. And the amount of the salvage reward is to be apportioned among these parties,—the owners of the property salved,—according to their several interests therein. The value of these interests is to be calculated at the place where the salvage services have ended,[2] as, to close these services, the salvors are not bound to go out of their way to any port the parties interested may name;[3] and if these have been concluded at one port, but the cargo is transhipped, and taken to another port, and sold there, the salvors are only entitled to salvage on its value at the port where their services were ended.[4] The freight is to be valued according to the proportion of the voyage performed.[5] As, when a ship was wrecked on her voyage from Honduras to England, and was taken into Bermuda, where she was repaired at an expense of nearly the amount of the whole freight, which, having afterwards completed her voyage and delivered her cargo, she earned:—salvage was allowed upon the one-half of the *total* gross freight.[6]

As to the reward for salvage services, to which the salvors are entitled, the before-quoted opinion of Sir John Nicholl may be here referred to as giving a correct exposition of what are salvage services, and the principle upon which these services are to be rewarded. The general rule is,—that where the value of the property so saved is large, a smaller proportion of that value is held as sufficient to award as remuneration for the salvage services; and where that value is of small amount, a larger proportion is allowed.[7] This proportion is determined by the High Court of Admiralty of England, or by the other courts having Admiralty jurisdiction; but in no instance, however meritorious the salvage services may have been, does the High Court award more than the one-half for salvage.[8]

By section 460 of the Merchant Shipping Act, it is enacted, that when any dispute arises in the United Kingdom (and not within the boundaries of the Cinque Ports), between the owners and the salvors, and the parties cannot agree to a settlement thereof by arbitration or otherwise, then, if the sum claimed does not exceed £200, the dispute shall be referred to any two justices of the peace resident at or near where the wreck is found, or at or near the place where the ship was lying, or the port or place into which she is brought after the salvage accident; but, if the sum claimed exceed £200, the dispute *may* be referred to the said two justices, *or* to the High Court of Admiralty in England or Ireland, or to the Court of Session in Scotland; and every such dispute may be heard and decided on the application of either salvor or owner, or of the agent of either.[9]

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1 *The Magdalen*, 31 L. T. 22.
2 *The Norma*, 1 Lushington, 124.
3 *The Houthandel*, 1 Eccl. and Ad. R. 25.
4 *The George Dean*, 1 Swabey, 290.
5 *The Norma*, *ut supra*.
6 Ibid.
7 *The Waterloo*, 2 Dod. 442.
8 *The Inca*, Gore *v.* Bethel, 1 Swabey, 370.
9 17 and 18 Vict., cap. 104, sec. 460.

Such justices may either themselves decide the dispute,—or take the aid of a person acquainted with maritime matters as assessor,—or they may, with or without a difference of opinion, appoint such a person as umpire or oversman to decide the point in dispute; and the justices or umpire must make an award as to the amount of salvage within the periods following,—the justices within forty-eight hours after the reference,—and the umpire within forty-eight hours after his appointment,—yet either can, by writing under their or his hand, enlarge these periods.[1]

These enactments are now amended and enlarged as follows:—1. They extend to all salvage cases where the value of the property saved does not exceed £1000. 2. And apply whether the salvage service has been performed within the bounds (three miles from the shores) of the United Kingdom or not. 3. The Secretary of State, &c., can appoint a circle of justices to exercise jurisdiction in salvage cases. 4. When no such appointment is made, the salvors can, by writing to the justices' clerk, name one justice, and the owner of the property saved can, in the same manner, name the other justice. 5. If either party fails, within a reasonable time, to name a justice, two or more justices may try (hear and decide) the case at Petty Sessions. 6. Any stipendiary magistrate, and, in England, any County Court judge,—in Scotland, the sheriff or sheriff-substitute,—and in Ireland, the recorder of a borough, or the chairman of Quarter-Sessions in a county, —can exercise the same jurisdiction in salvage cases as two justices.[2]

On application from either of the parties, the receiver of wreck for the district can appoint a valuer, to value the property as to which a salvage claim is made, and any salvage question has arisen; and when the valuation has been returned to him, he gives a copy of it to both parties, which copies, signed by the valuer and attested by the receiver, are evidence in any after proceeding.[3]

When the total amount of salvage payable has been finally ascertained by any of the ways foresaid, but dispute arises as to its apportionment (division into shares) among the several parties claiming, the party paying can pay the amount to the receiver of the district, who, if he receives the same, grants a certificate of the payment and of the services for which it is made. This certificate is a full discharge for all claims on account of these services; and the receiver then distributes the same among those entitled, on such evidence and in such shares and proportions as he thinks fit, which distribution is final and conclusive.[4]

2.—*Derelicts.*

The word "derelict" means totally forsaking, deserting, abandoning; and, in law, the term means, "an abandonment at sea by captain and crew, *without hope of recovery;* because a mere quitting of the vessel, for the purpose of procuring assistance from shore, or with an intention of returning to her again, is not an abandonment." "The Lord High Admiral has the custody of derelicts found at sea; if no owner appears, they become perquisites of Admiralty, the finder having no property in them, only being entitled to a reward for his trouble in preserving them.

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1 Sec. 146.
2 25 and 26 Vict., cap. 63, sec. 49.
3 Sec. 50.
4 17 and 18 Vict., cap. 104, secs. 466, 467.

If no owner appears, or if the claimant cannot prove his property, the salvors have not acquired any right in the thing found, but they must be satisfied for their expenses and trouble from a sale of the ship and cargo."[1]

The inquiry will then be—1. When a ship, cargo, or goods are derelict; and 2. When they are held not to be derelict;—and it may be observed, that in section 441 of the Merchant Shipping Act, the words "*stranded or in distress* at any place on the shore of the sea," &c., have been held to indicate distinct situations, and that "in distress on the shore," does not merely mean touching the shore, but that no limitation of the Admiralty jurisdiction was thereby intended as to salvage services on the high seas,—*i.e.*, more than three miles from the shore.[2] It has also been held, that "all goods derelict and afloat on the high seas belong, as droits (rights and privileges), to the Crown in its office of Admiralty." Whilst wreck is "at sea, it belongs to the Crown in its office of Admiralty, as derelict, flotsam, jetsam, or lagan."[3] Above high-water mark, it belongs to the lord of the manor, as grantee of the Crown, but beyond low-water mark, he can have no claim: it is on the high seas, and belongs to the Admiralty. It is equally clear that, when the tide covers this space, it is sea,—when the tide recedes, it is again land, and within the jurisdiction of the manor. If the article be floating, it belongs to the sea; it is not "a wreck of the sea," but "flotsam:" if it becomes fixed to the land, though there may be some tide remaining round it, it may be considered as wreck of the sea; but if having merely touched the ground, its character will depend upon its state at the time it was seized and secured into possession.[4]

1. When a ship, cargo, or goods are held to be derelict. There can be no doubt that, when ship and cargo are found on the high seas, abandoned by her captain and crew, and tossed about by the wind and waves,—or goods floating about at random, without bearing any indications as to where they came from, or to whom they had belonged,—that ship and cargo, or these goods, are derelicts; and these derelicts must be delivered by the finder to the receiver of wreck for the district—*i.e.*, to the officer of the customs, or of the coastguard, or of the inland revenue, or of such other person as the Board of Trade has appointed to be receiver. Any person—be he the owner or not—who secretes (hides, conceals, puts out of the way), or keeps (retains, withholds) possession of a cargo or an article thus found, or who refuses to deliver these to the receiver, or any one he authorises to demand these, incurs a penalty not exceeding £100, and the receiver, or any one as aforesaid, can take that cargo or article *by force* from the finder thus refusing to deliver these.[5]

As to the amount to be awarded for derelict salvage services,—the court can award to the extent of one-half the value of ship and cargo:—as in a case of derelict without any hope of recovery, and the services performed were meritorious, the court awarded one-half the value upon the whole cargo, stores, and materials;[6] and where the services in saving

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[1] *Per* Sir W. Scott, in *The Aquila*, 1 Rob. A. R. 41. [2] *The Leda*, 1 Swabey, 40.

[3] "*Jetsam*, is where goods are cast into the sea, and there sink and remain under water; *flotsam*, is where they continue swimming on the surface of the water; *lagan*, is where they are sunk in the sea, but tied to a cork or buoy in order to be found again."—1 *Blackst.* B. I. C. 8.

[4] *Per* Sir Chr. Robinton, in 3 Hag. Ad. R. 298.

[5] 17 and 18 Vict., cap. 104, sec. 443.

[6] Gore *v.* Bethel, *The Inca*, 12 Moore, P. C. C. 180; 1 Swabey, 370.

a derelict ship had been very great, one-half of the value of the property saved was awarded to the salvors.[1] Seldom less than one-third is given; and, in cases where a small value is at the sale realised for the derelict, and no owner appears, that value, after payment of all necessary costs, is divided among the salvors. In all cases, remuneration is made to the salvors on a liberal scale, and on taking into account the danger and labour that have been encountered.

2. When ships or goods are held not to be derelict. Thus, for instance, boats or barges left on a place which is dry at low water, or a ship at anchor without any one on board at the time. There must be a total abandonment by the captain and crew, without any intention of returning, and without hope of recovering, in order to constitute derelict; and, therefore, where the captain and crew leave the ship, not for the safety of their lives, but to get assistance from shore, the ship thus left is not a derelict.[2]

3.—*Towage.*

Towage, as distinct from salvage, is an engagement by a steam-tug or vessel to tow a vessel (not itself disabled) to its destination, or from one place to another. In such an engagement, it is an obligation distinctly understood, that the steam-tug or vessel shall be properly provided for the contracted towage service, and that the best endeavours and competent skill shall be exerted to accomplish the towage service engaged for;[3] and that each party will diligently endeavour to do his duty in accomplishing that towage service,—by using proper skill and diligence on board both the towing and the towed vessels,—and by neither doing anything, through neglect or mismanagement, to increase any accidental risk, or to produce unnecessary risk to the other.[4] And, therefore, when a steam-tug is engaged, for a certain sum, to tow a vessel from one point to another, there is no warranty that the tug will do so at all events, and under all circumstances,—but that her best endeavours will be used for that purpose, with competent skill, and by an adequate crew, furnished with such tackle and apparatus as a vessel of that class can be reasonably expected to have.[5]

Accordingly, when, in performing the towage, any unavoidable accident happens to the one, without any fault or blame on the part of the other,—this is one of the necessary risks of the engagement to which each party is exposed, but when the improper act of either occasions damage to the other, this raises a responsibility on the party committing it, if the other party, by some unskilfulness or bad management of his own, has not promoted that act;—as, where a collision was occasioned solely by the negligent acts of the captain and crew of the vessel towed,—it was held, that the owner of the tug was entitled to recover for damages.[6] And where a steam-tug was engaged towing a ship, with which two other ships came in collision, and other dangers were encountered, in the course of which the tug, to save herself, let the ship go, and afterwards, with another tug, resumed towing her, and in the end assisted the other ships;

1 *The Minerva*, 9 W. R. 84.
2 *The Barefoot*, 19 Jur. 841; *The Copenhagen*, 1 Swabey, 205.
3 *The Minnehaha*, 1 Lushington, 335.
4 Bland *v.* Ross, *The India*, 14 Moore, P. C. C. 210; 1 Lushington, 224.
5 Ward *v.* M'Corkill, 7 Jur. *n. s.* 1259. 6 Bland, *ut ante.*

and then claimed salvage from all the three:—but it was held that, though to save herself the tug did right in letting go the towed ship, yet she was bound, with due speed, to resume the towage of her, as her towage engagement bound her to do.[1] So, when a ship is in danger, and a steam-tug coming to her assistance makes a towage agreement, and nothing afterwards happens to change the kind of service,—the steam-tug can only claim recompense for towage.[2] Yet, in performing the towing, if an unforeseen and extraordinary hazard or danger arises to the vessel towed,—the steam-tug is not at freedom to leave the vessel, but is bound to afford her the necessary assistance,—and the tug is entitled, for doing so, to salvage reward.[3]

But circumstances may occur which may change an agreed-on towage into a salvage service,—the right to salvage, in such a case, setting aside the towage agreement,—unless the danger of the vessel was, in any way, caused by the fault of the tug.[4] It has been held, that the towing vessel engages to do all that is requisite to promote the vessel's safe voyage from the place of departure to the termination of the towage, and also to take the chance of ordinary bad weather; but if the voyage is completely interrupted by the "act of God,"—services subsequently afforded to the ship will be considered salvage, and not towage services.[5] And the towage of a ship near the land, in unsettled weather, if her ground tackling is disabled, has been held salvage service.[6]

However, when a vessel, in no known danger, accepted the services of a steamer to bring her into port—these services are not salvage services, and the usual amount for towage is sufficient payment.[7]

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[1] *The Golden Light* and *The Annapolis*, 5 L. J. 32.
[2] Ward, *ut ante*.
[3] *The Saratoga*, 1 Lushington, 318.
[4] *The Medora*, 1 Eccl. and Ad. R. 87; *The Storm King*, 30 L. J. 211.
[5] *The Galatea*, 4 Jur. *n. s.* 1064.
[6] *The Albion*, 1 Lushington, 282.
[7] *The Harbinger*, 16 Jur. 729.

VI.—PORT OF DESTINATION.

The port or ports of loading, and the port or ports of destination of the ship,—the place or places at which the voyage is to commence and at which it is to end,—must necessarily be stated in charter-parties and the bills of lading. Assuming, then, the agreed-on voyage to be so far performed, and the ship to have arrived in the vicinity of her port of destination, yet still she may be prevented from entering that port,—or, having entered it, delivery of the cargo in terms of the bills of lading may have been duly stopped.

These possibilities bring out the considerations:—1. Of the port of destination being blockaded;—or, 2. Of its being in hostile occupation; or, if neither of these impediments exist,—then, 3. Of entering the port of destination;—and, 4. Of the delivery of the cargo having been stopped,—technically termed, Stoppage *in transitu.*

I.—BLOCKADE.

Lord Stowell says, that "a blockade is a sort of circumvallation (surrounding, enclosing) round a place, by which all foreign commerce is, as far as human force can effect it, cut off. It is intended to suspend the entire commerce of that place, and a neutral is no more at liberty to assist the traffic of exportation than of importation. The utmost that can be allowed to a neutral is, that *having taken on board a cargo before the blockade begins*, she may be at liberty to retire with it. But it must be considered as a rule, that a neutral ship, departing, can only take away a cargo *truly and honestly purchased and delivered before* the commencement of the blockade, and if she afterwards takes on board a cargo, it is a fraudulent act, and a violation of the blockade."[1] "Blockade is the result of the conquest of the territorial sea of one belligerent by his enemy,—a fact which gives to the conqueror the sovereign command over those places, and, by consequence, the right of dictating the laws over those places. Blockade exists by the conquest, and continues as long as the conquest is maintained by an actual occupation. Blockade ought, therefore, to be real and effectual, and maintained by the forces sufficient, so that it may be impossible to get through to the place blockaded without exposing themselves to the fire of the conqueror."[2] "The conquest made over the sovereign of a port commences with the investment (enclosing), continues all the time of that investment, and ceases with it."[3] "The blockade commences with the investment; it matters little that the neutrals are ignorant of the fact; if one of their vessels presents itself with the design to go into the blockaded port, the belligerent has the right of prohibiting it from going over his conquest, and of applying to it the law which he has pleased to promulgate, if it persevere to desire to enter into his domains."[4] "The seas territorial and interior, the bays and gulfs, can be assailed, and at the time when they have become the possession of the power assailing, and remaining in its real possession,

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[1] *Per* Lord Stowell, in *The Vrow Judith*, 1 Rob. 120.
[2] Hautefeuille, "Des Droits et des Devoirs des Nations Neutres," p. 201, 2d ed., Paris, 1858.
[3] Ibid. 212.
[4] Ibid. 213.

that power can subdue and blockade all the ports and coasts washed by the conquered waters. A nation, of which the naval forces should be so very considerable as to surround the unfriendly coasts with a circle of war-vessels"—"will be able, by actually executing that investment, to subject to blockade all the coasts of his adversary. All the places possessed by a title of sovereignty by one belligerent,—all the places admitting of being conquered by the enemy, can, therefore, be subjected to blockade."[1] "The blockade commences when it is really supported by sufficient forces; it ceases when these forces do not further support it;—in other terms, the reality of a blockade is the sole condition of its existence."[2]

Such, in the present times, must a blockade be, to be "*réel et effectif*," —to be a real and effectual blockade of the ports and places notified to be blockaded and shut up from all trade and shipping,—and, by this actual investment of an enemy's coasts by the war-vessels of another nation, is an effectual blockade distinguished from what was formerly termed a "*blocus fictif*,"—a feigned blockade,—or a "*blocus de cabinet*,—a blockade of the closet,—or a "*blocus sur papier*,"—a blockade upon paper,—or a "*blocus par notification*,"—a blockade by a declaration or notification to other nations,—with, perhaps, one vessel to patrol around the ports or coasts thus pretended to be under blockade. But the Congress of Paris, 16th April 1856, declared that "the blockades, in order to be real and effectual, are to be effective"—(*i.e.*, of sufficiently operative force and strength)—"that is to say, maintained (continued and supported) by a force sufficient to really interdict (prevent and prohibit) the access (approach) to the coast or sea-shore of the enemy."

This may be taken to be the present law of Europe as to the matter of blockades, although it is most desirable that not only blockades, but wars, both at land and sea, should wholly cease. While, however, the right of blockade can be legally exercised, the courtesy of nations requires that the power imposing a blockade shall duly make known to other nations the existence of that blockade. This is termed, *notification of the blockade.*

"It is certainly necessary," said Lord Stowell, "that a blockade should be intimated to neutral merchants in some way or other. It may be notified in a public and solemn manner to foreign Governments; and this mode would be always most desirable, although it is sometimes omitted in practice—but it may commence also *de facto* (from the fact or by an act done) —by a blockading force on the spot, to those who come from a distance, and who may therefore be ignorant of the fact. *Vessels going in are, in that case, justly entitled to a notice before they can be justly liable to the consequences of breaking a blockade.* But I take it to be quite otherwise with *vessels coming out of the port* which is the object of the blockade; there no notice is necessary after the blockade has existed for any length of time; the continued fact is of itself a sufficient notice; it is impossible for those within to be ignorant of the forcible suspension of their commerce; the notoriety of the thing supersedes the necessity of particular notice to each ship."[3] "It is a general enough custom, without doubt, that one Government informs the others of measures of blockade to which it has had recourse; but this notification, which is not from an absolute

[1] 2 Hautefeuille, 208.
[2] Notes of M. Pradier Fodéré to 2 Vattel, 471, Paris ed., 1863.
[3] Lord Stowell, in *The Vrow Judith, ut sup.*

law or principle, has not any value by itself; it is only the proclamation of an existing fact, and which will already produce its effects."[1] "Since a long time ago, the political powers have adopted the custom of making known to neutrals the blockades which they make, by the acts notified by the means of public messengers. This act is usually described under the name of *notification diplomatic*. Since, under the pretence of blockade, more serious abuses have multiplied themselves, all the nations, one alone excepted, have admitted a more true way, more suitable to the principles, —of making known to the neutral navigators the existence of a blockade. This is a notification made to each ship that appears to go into the closed port. I shall call it *special notification*."[2]

Then, as to the length of time to be allowed before this diplomatic notification can be communicated to foreign Governments, and be announced by these to their respective subjects, Lord Stowell has said:—"The question as to the length of time proper to be allowed for notice must depend upon dates; it is a distinction of reasonable equity to give rather a more liberal allowance to persons in the situation of merchants in America, and is not to be taken merely on a calculation of the distance, but with reference also to the accidents by which the general intercourse, even after the allowance of dates, is liable to be retarded."[3] When the blockade exists by the fact only of a place being blockaded, the ignorance of a party may be admitted as an excuse for sailing on a doubtful and probable destination; but after the blockade has been duly notified,—not only an attempt to enter the blockaded port in violation of that blockade is illegal,—but, from the moment of quitting port to sail on such a destination, and with the purpose of entering the blockaded port, the offence of violating the blockade is complete, and the property engaged is subject to confiscation. The rule is,—that contracts made for a voyage, or for the conveyance of goods to a blockaded port, after the blockade has been publicly notified to the Government of this country, must be taken to have been entered into by the contracting parties with an equal knowledge of the existence of the blockade,[4] and, therefore, ships should not approach so near a blockaded port as to be placed almost within the effective protection of the shore, and with no necessity existing; for the presumption is, that they go there with an intention of breaking the blockade; and, were such an approach allowed, the whole purpose of blockade would be defeated.[5]

Nor can a neutral ship approach so near a blockaded port as to place herself almost within the effectual protection of the shore, and with no necessity existing;[6] so that "the neutral merchant is not to speculate on the greater or less probability of the termination of a blockade, to send his vessels to the very mouth of the river, and say, 'If you do not meet with the blockading force, enter; if you do, ask a warning, and proceed elsewhere.' The rule is, that, after the knowledge of an existing blockade, you are not to go to the very station of blockade under the pretence of inquiry."[7] And, accordingly, it has been held,—that sailing after notification, with instructions to proceed to the mouth of the harbour of the blockaded port, and inquire if the blockade was raised, is a forfeiture of

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1 Notes to Vattel, *ut sup.* 2 2 Hautefeuille, 223. 3 In *The Adelaide*, 3 Rob. 282.
4 *The Neptunus*, 2 Rob. 113; Medeiros *v.* Hill, 8 Bing. 231.
5 *The Neutralitet*, 6 Rob. 34. 6 *The Charlotte Christina*, 6 Rob. 403.
7 *Per* Lord Stowell, in *The Spes* and *Irene*, 5 Rob. 80.

neutrality, and a ground for confiscation :[1]—that a charter-party to proceed to a port, which is just thereafter blockaded, does not justify the captain in proceeding on the voyage to that port, *after* notification of the blockade:[2] —that though the neutral may have had no notice, actual or implied, of the existence of the blockade, at the time of first sailing on the voyage,—yet, if he be informed of that fact at any port he may touch at in the course of that voyage, but, notwithstanding, still attempts to enter the blockaded port,—this is a forfeiture of neutrality, and a ground for condemnation :[3]—and even lingering near a blockaded port, or continuing in the course towards it after notification, is a breach of blockade, as showing an intention to enter that port;[4] because, if it were once admitted that a vessel might enter an interdicted port to supply herself with water, or on any other pretence, a door would be opened to all sorts of frauds, without the possibility of preventing them.[5]

The punishment of a *wilful* breach of blockade, after due and sufficient notification of its existence, is confiscation of the violating ship and her cargo. But, to incur this confiscation, it must be proved that, when the ship committed the alleged breaches, the port for which she was sailing *was legally in a state of blockade, and was known* by the captain or owner to be so,[6] and this knowledge is not to be inferred or assumed, but is a question of fact for the judgment and decision of a jury. As where a ship, insured from Liverpool to Buenos Ayres (then blockaded), sailed from Liverpool on the voyage *before* the blockade was notified in this country, —but, thereafter, having put into a port in the west of Scotland, where the captain might have known of the blockade, which, by that time, had been notified in the *London Gazette*, but it was not proved that he did know; and the ship having arrived off Monte Video, the captain, seeing a number of ships together at night, cast anchor until daylight, when the ship was seized by the blockading ships, and taken into Rio Janeiro :—in an action against the underwriters, the jury found, that the captain did not know of the blockade; and it was held that the knowledge of the captain was not to be taken for granted,—that notice to a state is notice to all its subjects, but that the fact of actual knowledge was properly left to the jury.[7]

But the existence and extent of a blockade may be so generally known, that knowledge of it in an individual may be presumed, without distinct proof of his personal knowledge, and this knowledge may supply the place of any direct communication from a blockading squadron,—yet the fact, with the knowledge of which an individual is thus to be charged, must admit of no reasonable doubt; and that, assuming the blockade *to be legal*, the captain of the ship requires to have personal knowledge of all that was publicly known, at the time, at his place of information, and that, as the general report, at that time and place, was, that *all* the ports of a certain country in a particular sea were blockaded, which was not the fact, the notice of the blockade being thus more extensive than the blockade itself, —was of no effect against a neutral.[8]

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[1] *The Irene*, 5 Rob. 76.
[2] *The Tutela*, 6 Rob. 177.
[3] *The Columbia*, 1 Rob. 138.
[4] *The Elizabeth*, Edw. A. R. 198.
[5] *Per* Lord Stowell, in *The Exchange*, Edw. A. R. 42.
[6] *The Franciska*, 10 Moore, P. C. C. 37.
[7] Harratt *v.* Wise, 9 B. and C. 712.
[8] *The Franciska*, *ut sup.*

Such questions, and all other questions arising out of a blockade, have to be determined by a lawfully constituted prize court, sitting in the blockading or belligerent country; as, "those who command British cruisers (war-vessels) are bound by their orders *to detain* vessels bound to blockaded ports, attempting to break a blockade,"[1] and to send such home for trial and sentence by the prize court. And as neutral ships will be claimed by neutrals, on the ground that the ship was neutral, and not enemy's property,—the rule of the prize court is,—that the party claiming must produce precise proof of his ownership,—and any circumstances of fraud, or of connivance, or of imposition, is fatal to his claim.[2] The rule has been thus stated by Lord Stowell:—"It is a known and established rule with respect to a vessel, that, if she is navigating under the pass of a foreign country, she is considered as bearing the national character of that nation under whose pass she sails;—she makes a part of its navigation, and is, in every respect, liable to be considered as a vessel of that country. In like manner and upon similar principles,—if a vessel purchased in the enemy's country is, by constant and habitual occupation, continually in the trade of that country,—commencing with the war,—continuing during the war,—and immediately *on account of the war*,—on what ground is it to be asserted that that vessel is not to be deemed a ship of the country from which she is so navigating, in the same manner as if she evidently belonged to the inhabitants of it?"[3] So that a vessel sailing under the colours and pass of a nation is to be considered as clothed with the national character of that country.[4]

No distinction is made between a flag being adopted previous to the commencement of hostilities, when there was no reason to suppose hostilities would have taken place, and the flag being adopted during war; and, therefore, a neutral's share in an enemy's ship, though purchased and held before the war, is liable to condemnation equally with the shares of the enemy in the same ship,—upon this principle, that when a vessel is sailing under a hostile flag, a neutral cannot claim the property under an enemy's flag.[5] And it has been held, that a neutral cannot claim *one-third* of an enemy's ship brought in for condemnation, as being *mortgagee* of the one-third by an alleged mortgage dated before the declaration of hostilities,—the claimant, though a citizen of a neutral state, being resident and carrying on business in the enemy's country.[6] It has also been held, that when a neutral held three-eighths of a captured ship, these were liable to condemnation with the five-eighths that belonged to subjects of the enemy's country.[7]

In order, therefore, to make an effectual sale by an enemy to a neutral in time of war, it must be an absolute and unconditional sale, and not merely a pretended sale to cover his property during the war;[8] and though a British subject may, immediately previous to actual hostilities, purchase shipping belonging to subjects of that state likely to go to war with this country, and may be able legally to hold such shipping,—wherever

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1 *Per* Dr. Lushington, in *The Leucade*, 1 Jur. *n. s.* 564.
2 Batten *v.* The Queen, 11 Moore, P. C. C. 271.
3 *Per* Lord Stowell, in *The Vigilantia*, 1 Rob. 13.
4 *The Vrow Elizabeth*, 3 Rob. 3.
5 *The Industrie*, 18 Jur. 1005.
6 *The Una*, 18 Jur. 681.
7 *The Primus*, 18 Jur. 934.
8 *The Neydt Gedacht*, note to 1 Rob. 137.

lying at the time of sale, if not lying in a blockaded port, or on her voyage to a port of the belligerent country,—yet, by such a sale, the property bearing to be transferred must be so transferred by a sale, really and truly and absolutely and completely, of all the interest of the enemy seller to the neutral purchaser, and by a true and honest and absolute deed of transference; and anything designed for the continuance of the interest of the enemy seller in that subject of sale altogether destroys the sale.[1] But where a ship has been sold, really and truly and unconditionally, by an enemy seller to a neutral purchaser, when war was highly probable, or even during war, it is not void because a part only of the price has been paid, and the balance of that price has been agreed to be paid out of the earnings of the ship:—it being held, that the non-payment of part of the purchase-money did not create a right of preference on the freight and ship in favour of the seller, so as to make the ship, in possession of a neutral owner, liable to seizure by a belligerent.[2] However, when the purchase of an enemy's merchant ship is made by a neutral, immediately before the war, and that ship is seized during the war as enemy's property,—the neutral claimant must prove to the prize court the sale, the value, and the price, and the payment, or mode of payment, of that price.[3] And though such a transfer may be made during a voyage, when there has been no actual war, and no prospect of war,—yet, in time of war, this is prohibited, as being a fraud on belligerent rights.[4] As, when a Russian vessel, Russian owned and sailing under the Russian flag, and of which the captain was a Prussian by birth, but a Russian by trade, was sold while on a voyage to Palermo, by the captain, in virtue of a power of attorney by the Russian owner, to a Dane by birth, but then a merchant residing at Messina, and the Danish flag was hoisted,—and, on her return voyage to Cronstadt, the captain, at Copenhagen, was made a Danish subject and a burgher of that city, and the ship was then transferred to him: but there was no evidence of new ship's papers having been got at Copenhagen,—that anything was done by her as a Danish ship,—or that on either occasion the pretended price was really paid:—it was held, that the ship had never changed her character; and she was, therefore, condemned.[5]

Again, it is also necessary that the party claiming seized property be a neutral,—that is, for commercial purposes, a person resident (domiciled) and carrying on his business in a neutral country, during time of peace; and, during war, he has the right of trading with the belligerents as in peace, excepting contraband of war, and being liable to the exercise of the rights of war by the one belligerent against the other. But as this neutral character of a trader is for the purposes of trade, it is to be determined by the national character of the place where he carries on that trade; and, in the case of war (or blockade in war), a reasonable time is allowed foreign merchants carrying on trade in the hostile port or country for transferring themselves and their means and effects to another country,—of which, if a foreign merchant does not take the advantage, he is to be treated, for the purposes of trade, as a subject of the power under which he carries it on, and as an enemy of those with whom that power is at war.[6]

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1 *Per* Lord Stowell, in *The Sechs Geschwistern*, 4 Rob. 100.
2 *The Baltica*, Sorensen *v.* The Queen, 11 Moore, P. C. C. 119.
3 *The Ernst Mirck*, 1 Jur. *n. s.* 119.
4 *The Jans Frederick*, 5 Rob. 128.
5 *The Soglasie*, 1 Jur. *n. s.* 47.
6 *The Gerasimo*, 11 Moore, P. C. C. 88.

As this character is acquired by residence, so it is a casual, an accidental character, which ceases with his residence, and no longer adheres to him from the moment he really and truly puts himself in motion to quit the country of his residence, without any intention of returning.[1] But if a merchant has a house of trade in the enemy's country as well as in his own neutral country, there is no principle on which to support the assumption that that merchant is to be considered, in his whole concerns, as an enemy's merchant, as well in those that regarded his neutral house, as in those that belonged to his belligerent domicile.[2]

Questions of this kind may arise out of matters connected with a blockade, and which may occur either before, or during, or after the blockade. As to cargo, it has been resolved by the Treaty of Paris, 1856, that the neutral flag covers enemy's goods with the exception of contraband of war, and that neutral goods, except contraband, are not liable to capture under an enemy's flag.

In maintaining the blockade, it is the imperative duty of the naval officers commanding the blockading ships to seize all ships whatever to which may be fairly ascribed a design of breaking the blockade and entering the blockaded port,—to make the necessary preparatory examinations of the principal officers of each vessel so seized,—to send the vessel herself to some convenient port in Her Majesty's dominions for condemnation as a prize,—and to deposit in the Admiralty Court all the papers found on board each prize.[3] With the exception of neutral ships actually loading or discharging in the blockaded port at the time the blockade is formed, to which a certain number of days are usually allowed for withdrawing, all admission to and departure from that port are cut off by the blockading ships; and the previously formed purpose of thus either going into or coming out from the blockaded port, when attempted to be put in execution, is a violation of the blockade, and subjects the violating ship to seizure and forfeiture.[4] No neutral ship can, on the pretended purpose of going farther on, approach so near to the blockaded port as to be able to slip in without hindrance; and therefore a neutral ship, found in such a situation, is held in law to have gone there with the intention of breaking the blockade;[5] and whatever may be the doubtful cause of a neutral ship being in such a situation, she cannot place herself, with no existing necessity, so near a blockaded port as to be almost within effective protection of the shore, so as to elude the very purpose of the blockade.[6] Even the lingering or passing the time in the neighbourhood of the approach to a blockaded port, without any apparent necessity, exposes the ship to seizure and condemnation.[7]

Nor will a neutral ship be permitted to enter, nor will it be an excuse for a neutral ship entering a blockaded port, for the pretended purpose of supplying herself with water, or on any other pretence;[8] and if a vessel is captured in attempting to enter a blockaded port, because she is in a leaky condition, it must be proved that this entering of the blockaded port

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1 *The Indian Chief*, 3 Rob. 20.
2 *The Portland*, 3 Rob. 44.
3 *The Elise*, 1 Jur. *n. s.* 95; *The Gerasimo, ut sup.*
4 *The Neptunus*, 2 Rob. 110.
5 *The Neutralitet*, 6 Rob. 34.
6 *The Charlotte Christina*, 6 Rob. 103.
7 *The Elizabeth*, 1 Edw. 198.
8 *Per* Lord Stowell, in *The Exchange*, 1 Edw. 42.

arose from an imperious and overwhelming necessity.[1] It has been very properly said, that "the blockading squadron cannot refuse the passage to a vessel in so great distress, when it (the blockading squadron) cannot itself furnish to it (the vessel) the relief necessary for reaching nearer the free port, either giving to it or exchanging provisions, or doing to it to make the repairs indispensable in order to keep the sea. If it (the blockading squadron) cannot properly relieve the ship in distress, and it is this which oftener happens, as it (the squadron) does not wish it, it is of its power to interdict it to enter the blockaded port."[2]

This, however, is very different from a ship attempting to break a blockade, and, without the sanction of the commandment of the blockading ships, to enter a blockaded port. In such a case, the ship and cargo are rightly seized and confiscated; but, in the case of a vessel in distress from want of provisions or of repairs, it is only reasonable that that ship obtain direct permission from the commandant of the blockading ships to enter that blockaded port for the special purpose of procuring such repairs or provisions as have been shown to be absolutely necessary for the vessel continuing her voyage to her port of destination. "It ought not to do any act of commerce, nor even land its cargo, unless the repairs require the expense to land the whole or part of the cargo. It ought then to return from the coast without selling any part."[3]

What has been before said relates to a real and effectual blockade, by which all access of neutral vessels to that forbidden place is cut off, as any other is, in truth, no blockade at all, as far as neutrals are concerned.[4] And, therefore, though it may be generally and publicly reported that the ports of a certain line of coast are in a state of blockade, when, in fact, no such blockade exists, the seizure of a ship for breach of this alleged blockade is illegal. So it has been held that a ship cannot be condemned for a breach of blockade, unless, at the time of the alleged offence being committed, the port for which she was sailing was *legally* in a state of blockade, and was known by the captain or owner to be so.[5] As, when a neutral ship was captured in the Gulf of Finland by one of the British war-ships for breach of the blockade of Cronstadt, when there was no such blockade, and the ship was sent to England for condemnation as a prize:—it was held, that as the seizure had been made without probable or reasonable cause, the owners of ship and cargo were entitled to have these restored with damages and expenses.[6] It has also been held,—where a ship has been seized on suspicion of intending to enter a blockaded port, but such an intention was refuted by the ship's papers, and by the evidence generally, and she was restored by consent,—that the captors could not bring evidence to refute that of the owner, and were liable in damages and expenses.[7] And when it did not appear from the papers of a ship captured off a blockaded coast, nor from the evidence of the witnesses, that there was an intention to break the blockade,—it was not allowed the captors to prove that this was the intention.[8] So, likewise, in the case of a neutral (Danish) vessel seized at Leith by the (non-commissioned) cus-

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[1] *The Panagia Rhimba*, 3 Jur. *n. s.* 23. [2] 2 Hautefeuille, 220, 221.
[3] Ibid. 221. [4] *Per* Lord Stowell, in *The Juffrow Maria*, 3 Rob. 154.
[5] *The Franciska*, 10 Moore, P. C. C. 37.
[6] *The Ossuschachtvotter*, 9 Moore, P. C. C. 150. [7] *The Fortuna*, 2 Jur. *n. s.* 71.
[8] *The Aline and Fanny*, 2 Jur. *n. s.* 192.

toms officers, for a supposed breach of the blockade of Archangel, which port she had left *after* the time of blockade, according to the *Gazette* notice, but *within* the time allowed by the officer commanding the blockading ships:—it was held, that the seizure was not justifiable, and that the ship must be restored, with damages up to the time the officers offered to restore her, and expenses.[1]

But if a blockade has existed for some time, and if there is no intention of breaking the blockade, if found to continue in force when the ship arrives at the port,—the mere sailing to a port which is blockaded at the commencement of the voyage is not an offence against the law of nations, as it may be of great importance to merchants to introduce their goods at the very earliest moment of relaxation into the port which has been blockaded. And, therefore, where it is the original purpose, or a condition of the charter-party, to inquire as to the continuance of the blockade, either at some port of the country, or at any of the blockading fleet, it is no defence for the non-implement of the charter-party, that the port of destination was in a state of blockade, if both parties had equal knowledge of the existence of that fact at the time of entering into the charter-party. Accordingly, in a case of insurance, at and from Liverpool to any port or place in the River Plate, with liberty, in the event of a blockade, or being forced off the River Plate, to proceed to any other port, and there wait or discharge,—the ship sailed from Liverpool after the notification of the blockade of the ports in the River Plate had been published in the *London Gazette;* and, in proceeding up the Plate to Buenos Ayres, she was detained by a frigate of the Brazilian blockading force below Monte Video, sent in there, and afterwards to Rio Janeiro for adjudication; but, on the way there, she was rescued by her captain and crew, and brought back to Liverpool:—to an action on the policy of insurance, it was pled, that the voyage was illegal, as being to a blockaded port after notification of the blockade, but the verdict of the jury being, that they were not satisfied the captain intended to violate the blockade, the court held, that the vessel might have sailed on the voyage insured without contravening the law of nations, provided it was a part of the original intention to inquire as to the continuance of the blockade at any port of the blockading country, and that the facts proved did not indicate any intention to violate the blockade.[2] And in another action against a shipowner for not proceeding to Terceira, in terms of the charter-party, it was pled,—that, at the time the charter-party was entered into, Terceira was in a state of blockade by the Government of Portugal, and, consequently, the voyage was illegal; and that, though not strictly speaking illegal, the circumstance of the blockade operated as an excuse for the non-performance of the charter-party:—but it was held, that there was no evidence of any understanding between the contracting parties that the captain was to break the blockade of Terceira in order to deliver his outward cargo; that the fact of the blockade did not appear to enter into the contemplation of either party until after the charter-party had been signed; and that, upon the evidence, the blockade had ceased to be a real and effective blockade long before the charter-party was entered into.[3]

The general rule in blockade is, that the "conquest over the sovereign

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[1] *The Elise*, 1 Jur. *n. s.* 95. [2] Naylor *v.* Taylor, 9 B. and C. 719.
[3] Medeiros *v.* Hill, 8 Bing. 231.

of the port commences with the investment (enclosing by the blockading ships), continues all the time of that investment, and ceases with it." "When the vessels charged with maintaining the conquest are themselves removed, and have abandoned the part of the enemy's territory of which they were possessed, that part returns to its first owner, the free sea"—"recovers its own liberty. The blockade has ceased to exist. The neutrals can communicate with the port by crossing the sea, rendered of new common to all the peoples, and the territorial sea, whereof the original sovereign allows them the entry." "The blockade, a material effect of a material fact, cannot exist in the absence of that fact."[1]

And it has been said by very high authority, that it is "the duty of a country *notifying* the blockade to notify the revocation also." "It is to be presumed that the notification will be formally revoked, and that due notice will be given of it; till that is done, the port is to be considered as closed up, and from the moment of quitting port to sail on such a destination, the offence of violating the blockade is complete, and the property engaged in it is subject to confiscation."[2]

Should the blockading ships be driven from their stations by any inevitable cause, as by a storm, it is not to be thence inferred that they have abandoned their posts, and that the blockade has, therefore, been removed. "It happens very often that the winds, the state of the sea, the want of provisions, the necessity of repairing the vessels, or of giving some rest to the crews exhausted by fatigue or sickness, or any other accidental cause, compel the vessels to remove themselves. Certainly, they ought to return to their stations as soon as the cause which has forced them to resign it shall have disappeard."[3]

II.—PORT IN HOSTILE OCCUPATION.

Although the ship's port of destination may not be blockaded, yet it may be in possession of an enemy, so as to make it unsafe for a neutral or other ship to enter; and it is to be hoped that, now-a-days, no captain will be so ignorant of the situation of his destined port and of its sea-marks as to mistake for it a port in the occupation of an enemy;—as in one case, the captain on the Spanish coast went into Barcelona, then in the hands of the enemy, and farther up the Mediterranean than Tarragona, his last port of destination on that coast.[4]

It is the general rule, that all trading with an enemy is prohibited, by the declaration of war between the two countries, to all persons, natives, naturalised subjects, and foreigners residing and trading in either country; and consequently, all contracts for the sale, shipping, and conveyance of cargoes from the one country to the other are thereby at an end.[5] This rule, "restraining the subjects of a country from carrying on commercial intercourse with the enemies of the state, seems to be as strongly fortified by reason and practice as any rule of law can be."[6]

This is the law in regard to commerce and commercial relations be-

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[1] 2 Hautefeuille, 212, 213.
[2] *Per* Lord Stowell, in *The Vrow Johanna*, 2 Rob. 109.
[3] 2 Hautefeuille, 213.
[4] Tait *v.* Levi, 14 East, 481.
[5] *The Vigilantia*, 1 Rob. 13; *The Hoop*, ibid. 198.
[6] *Per* Lord Stowell, in *The Cosmopolite*, 4 Rob. 10.

tween the belligerent countries; but in regard to neutrals, the law is otherwise. "The state of neutral nations does not alter; they are at peace with all the others, even with the belligerents; as for them, the war does not exist, they ought, accordingly, to enjoy all the advantages of the peace; their commerce, their navigation, ought to continue to be free as through the past."[1] "It would be a gross violation of neutral rights to prohibit their trade, and to permit the subjects of this country to carry on an unrestricted commerce at the very same ports from which neutrals are excluded."[2]

A port or place may be in hostile occupation, *i.e.*, in the military possession of an enemy, or of one of the belligerent powers, during a war, while the inhabitants of that port or place continue neutral, and retain their former civil polity, and their neutral character and trade and relations, as the city of Hamburg in the wars of Napoleon I. The neutral trade of and with such ports and peoples can be carried on, though the port may be thus in possession of a party at war with another party, but in which the neutral is not engaged. Only, neutral ships must not carry in this trade any articles *contraband of war*, and they must submit to visitation and search by the duly commissioned ships of the belligerent powers.

But as all communication between two countries at war is put an end to by the war and during the war, so the affreightment of a ship to a hostile port is ineffectual. As to an action on a charter-party, freighting a British ship to proceed to Odessa (a Russian port in the Black Sea), and there load from the freighter's factors a complete cargo and proceed therewith to the port of discharge, the act of the Queen's enemies, &c., excepted, —but the freighter's factors did not load the cargo during the lay-days or the demurrage-days:—it was pled that, *after* the date of the charter-party, and *before* the ship arrived at Odessa, and before the freighter had provided a cargo, the Queen had declared war against Russia, and that war still existed, and Odessa had been a hostile port in possession of the Queen's enemies, and that from the time war was declared it became impossible to the freighter to perform his agreement, without dealing and trading with the Queen's enemies,—by reason of which the charter-party was made void:—it was held, that the charter-party was put an end to before the time agreed on for its performance had elapsed, by an impossibility of legally performing it, as the shipment of a cargo from an enemy's port, even in a neutral vessel, implied a trading and dealing with the enemy, not permitted by law to a British subject.[3]

To a similar action upon a like charter-party, it was also pled, that before the expiry of the time agreed on for loading the vessel, war had been declared between Britain and Russia, and had since continued:—this was held to be a good answer.[4]

In these cases, the ships were neutral ships, and the war provided against was a war between this country and another nation; and where it had been agreed by charter-party that, after discharging her outward cargo, the ship was to proceed to Galatz or Ibraila (ports up the Danube), as ordered by the charterer's agents, and there load a cargo of corn, and discharge the same at a port in the United Kingdom, "restraints of princes

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[1] 2 Hautefeuille, 6.
[2] *Per* Lord Stowell, in *The Success*, 1 Dod. 134.
[3] Esposito *v.* Bowden, 7 El. and Bl. 763.
[4] Barrick *v.* Buber, 2 Scott, *n. s.* 563.

and rulers," &c., excepted:—it was held that the voyage commenced from the discharge of the outward cargo, and that the exception of the restraints of princes applied to Ibraila, the intended port of loading; and that, consequently, it was a good answer to an action for not loading, that the charterer was prevented from loading by the restraint and prohibition of the ruler of Ibraila.[1] And in another case, arising out of the same war, the charterer and the shipowner were both British subjects, and the ship was a British ship; and it was agreed by the charter-party that the ship should proceed to Odessa, and there load from the charterer's agent a cargo, for doing which forty-five running days were allowed;—and, accordingly, the ship arrived at Odessa on 26th February, was ready to load on 4th March, and on the 10th this was intimated to the charterer's agent, who said he had no cargo to load, and on 1st April it was known at Odessa that war had been declared between Britain and Russia:—it was held, that there was no evidence of a failure to load before the declaration of war.[2]

But charter-parties and contracts of affreightment are thus put an end to by a war between this country and the country of the lading or discharging port only, but not by a war between that country and any other nation. Thus, where two British subjects entered into a charter-party for a British ship, on a voyage to Constantinople, and thence to Odessa, there to load a full and complete cargo from the charterer's agent, under this condition, that "in case of war having commenced previous to and continuing on the ship's arrival at Constantinople," the charterer was bound to load the ship at that port at a less rate of freight:—in an action against the charterer for not loading a cargo at Constantinople,—it was held, that the war meant was such a war as would make the voyage from Constantinople to Odessa unlawful for an English ship, and thus have put an end to the contract; and that, therefore, a war *between Russia and Turkey* did not give a shipowner a right to a cargo at Constantinople.[3]

III.—ENTERING PORT OF DESTINATION.

Let it be assumed, apart from all such obstacles as the preceding, that the ship is drawing near to her port of destination, which the captain should have his ship in a proper state for entering. But as it cannot be expected that every shipmaster is so well acquainted with the particular navigation of his port of destination as to be capable of piloting his ship into such port,—and, though he were, yet, in regard to the underwriters, it is the general rule that, in entering his port of destination, or in entering and navigating the river on which that port is situate,—the captain shall put his vessel under charge of a certified pilot. For this purpose, and when arrived at the proper locality for obtaining the services of such a pilot, the captain has to display, and keep displayed, the usual signal for a pilot, and to keep his ship in such a position as will afford the pilot the proper facility in getting on board. When the pilot comes aboard, he takes the sole charge of navigating the ship;[4] but should no such pilot

[1] Bruce *v.* Nicopulo, 11 W. H. and G. 321.
[2] Reid *v.* Hoskins, 6 El. and Bl. 953.
[3] Avery *v.* Bowden, 1 Jur. *n. s.* 1167.
[4] *The Argo*, 1 Swabey, 462.

come off, after the pilot's signal has been flying for a reasonable time, the captain may then employ an unlicensed person to pilot his ship (who, however, must give up the charge on a qualified pilot offering his services), —or he may employ any moving power he pleases, as boats, a steam-tug, or another vessel,[1]—or the captain, being himself a person of competent skill, and having used in vain all reasonable means to obtain a pilot, is entitled to exercise his own sound discretion, and enter the harbour without one, as the law requires no one to perform impossibilities.[2]

Having thus entered the port of discharge, and safely and properly secured the ship at her moorings or anchorage, according to the capabilities of the port,—the captain's duty then is, to report his ship, cargo, and crew to the customs, *douane*, or other proper authority, from whom he has to obtain the requisite clearance sufferance, *pratique*, or other official document, by which the landing of the cargo is permitted; and though, strictly speaking, the captain may not be *bound* to give notice to the consignee of his ship having arrived, yet, in general, it would be very little personal trouble to give this notice to the party named in his copy of the bill of lading.

But the captain may have received written notice from the shipper, or one in his right and place, not to deliver in terms of the bills of lading; and this leads us to consider—

IV.—STOPPAGE IN TRANSITU.

Apart from the obstacles already noticed, another obstruction to delivery may arise,—as, while the goods are in the course of passage or carriage from the seller or consigner to the purchaser or consignee, the law gives a right to the unpaid seller or consigner to stop or countermand delivery, and to resume possession, to the effect of securing payment of the price,—the purchaser or consignee being in a state of reputed insolvency, or on the eve of bankruptcy, or bankrupt.

This right of stoppage can only be exercised for payment of the price, by stopping the delivery of goods, and, therefore, the person entitled to stop the goods, is either the seller himself, or any one in his right, or who has the equitable right of a seller. So, a person abroad, who purchases goods on his own credit, upon the orders of another in this country, to whom he consigns them, and charges his commission, is to be held as the seller, and is entitled to stop them *in transitu;*[3] and where a person ships goods on joint-account of himself and the consignee, he is entitled, on the insolvency of the latter, to stop the goods.[4] Even a foreigner, shipping a cargo to a British merchant, under a British licence, can stop the goods by his agent in this country;[5] and a consigner can exercise this right, though part of the price has been paid by the consignee.[6] Although bills have been drawn and accepted for the price, yet, if these become worthless, the seller or consigner can stop the goods *in transitu.*[7] And although the consigner may have received the consignee's acceptance for part of the

1 *Per* Parke, B., in Beilby *v.* Scott, 7 M. and W. 101.
2 Phillips *v.* Headlam, 2 B. and Ad. 380.
3 Fiese *v.* Wray, 3 East, 93.
4 Newson *v.* Thornton, 6 East, 17.
5 Fenton *v.* Pearson, 15 East, 419.
6 Hodgson *v.* Loy, 7 T. R. 445.
7 Turner *v.* Trustees of Liverpool Docks, 6 W. H. and G. 543.

price, he can stop them *in transitu* on the consignee's insolvency, and resume possession of them, without tendering back the bill,[1] and though it may have been endorsed for value to a third party.[2]

It is only as between the unpaid seller or consigner and the purchaser or consignee,—or one in the right and place of the seller or consigner, and purchaser or consignee,—that this right of stoppage *in transitu* can be legally and validly exercised, as the former is not so entirely dispossessed of the property, until the goods have come into the possession, actual or constructive, of the latter. Till then, the seller or consigner has a full right, for just and proper cause, to recall the intended delivery and stop the goods. But there can be no exercise of this right, in the case of consignments, between a principal and his factor or agent,—the latter having no property in the goods as against the principal;[3] nor has one who had only a claim of retention upon goods, but who has placed them on board a ship for the purpose of delivery to his employer or principal, any right to stop them *in transitu*;[4] nor is a person who is merely surety for the consignee, by having accepted bills drawn by the seller for the price, entitled to stop the goods.[5] And where a merchant in New York purchased and shipped goods for merchants in Liverpool, who stopped payment after receiving part of the goods shipped by one vessel; and, on the arrival of the other vessels with the goods on board, B. & Co., who had purchased in New York several of the bills drawn for the price, but were not the general agents for the merchant shipper, nor had any authority from him, gave notice to the captain and consigner of each ship to stop the goods, which was thereafter adopted and confirmed by the merchant shipper:—but it was held, that there was no effectual stoppage to be ratified by the merchant shipper.[6] And a broker for third parties having bought cotton in his own name, to be consigned to them, and having drawn bills for the price on parties agreed on, who failed after shipment of the cotton, and before the bills were due,—it was held, that the broker could not stop the cotton.[7]

Although the circumstances which entitle the unpaid seller or consigner to stop goods in the course of transit to the purchaser or consignee are the failure, insolvency, or bankruptcy of the latter,—yet this privilege is only allowed to secure the price, and to protect the seller or consigner against the insolvency of the purchaser or consignee, and must not be exercised prematurely. If the goods have been shipped on account and risk of the consignee, upon his order, and bills of lading are endorsed and transmitted, and the consigner draws bills for the amount,—it has been held, that the consigner cannot take possession of the goods at the port of destination, and insist upon *immediate payment* as the condition of delivery,—the consignee *not having failed in his circumstances*, and being ready to accept the bills when tendered.[8] So, where goods were sold to be sent to the purchaser in London, by a shipping company, and the purchaser granted bills for the amount of the invoice;—the goods were delivered to the shipping company, and a receipt taken for them, *as received from the purchaser*, who, on their arrival in London, tendered freight and charges;—but the

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[1] Edwards *v.* Brown, 2 M. and W. 375.
[2] Fiese *v.* Wray, *ut sup.*
[3] Kinloch *v.* Craig, 3 T. R. 783.
[4] Nicholls *v.* Le Feuvre, 2 Bing. *n. c.* 83.
[5] Siffkin *v.* Wray, 6 East, 371.
[6] Bird *v.* Brown, 4 W. H. and G. 786.
[7] Oakford *v.* Drake, 2 F. and F. 493.
[8] Walley *v.* Montgomery, 3 East, 585.

company's wharfinger refused to deliver, because the sellers had given notice to stop:—it was held, however, that, in these circumstances, there was no pretence for exercising the right of stoppage.[1] But, as in the case already referred to, where the consigner has received the consignee's acceptance for part of the price, he can, on the consignee's insolvency, stop the goods while *in transitu*, and retain possession of them, without tendering back the bill.[2] And where the purchasers become bankrupt, and their factors, to whom the goods are consigned by a specially endorsed bill of lading, also become bankrupt,—the unpaid seller can stop the goods *in transitu* before they come to the factor's hands, though the latter be under acceptance to the purchasers on general account.[3] So, also, goods in bales were shipped, deliverable to B. & Co. of London, or their assigns (they being factors for sale), and were landed at a wharf, and B. & Co. gave the wharfingers orders to "weigh and deliver" the goods to M., who had purchased them from B. & Co.:—the goods were accordingly weighed, and a note of the weights sent to B. & Co., who, conform thereto, made out an invoice to M.:—he resold several bales of the goods, which, upon his orders, were delivered by the wharfingers to the purchasers:—the rest were on the wharf up to the time they were stopped by B. & Co., the unpaid sellers; and these had not been transferred in the wharfingers' books from the name of B. & Co. to that of M.; nor was any warehouse rent paid by him:—notwithstanding of the deliveries of part of the goods to the purchasers from M.,—it was held, that the right of B. & Co. to stop the goods was not thereby put an end to.[4] And M. & Co. of Charleston, having purchased cotton by orders from B. & Co. of Liverpool, shipped it on board a ship of B. & Co. on her homeward voyage, and the captain signed a bill of lading, making the cotton to be delivered at Liverpool, "to order or to *our* assigns, paying for freight for the cotton nothing, being owners' property:"—an invoice was sent by M. & Co. to B. & Co., stating the cotton to be shipped on board *The Charlotte* for Liverpool, "by order and for account of B. & Co., there and to them consigned," and they were advised that bills had been drawn on them for the cotton, and they were desired to insure:—M. & Co., not having sufficient funds of B. & Co. to pay for the cotton, *sold* the bills to a bank in Charleston, and delivered to the bank the bills of lading, endorsed—"Deliver the within to the Bank of Liverpool or order,"—as a security for payment of the bills, which were dishonoured, and taken up by M. & Co.—B. & Co. were bankrupt before the ship's arrival; and M. & Co., by their agent, gave notice, when the ship arrived, to stop the cotton, and it was then lodged in a warehouse of the Liverpool Docks:—it was held, that M. & Co. did not, by their endorsing the bill of lading and delivering it to the bank, dispossess themselves of their property in or possession of the cotton, but preserved their rights as unpaid sellers.[5]

But this right of stoppage *in transitu* does not exist when the bill of lading has been endorsed by the consignee, for a valuable consideration, to an onerous endorsee; and it has been solemnly decided, that the *bonâ fide* endorsement of a bill of lading, taken to order or assigns, and the delivery of it to the person to whom it is endorsed, fully transferred the property

[1] Noble *v.* Adams, 7 Taunt. 59.
[2] Edwards *v.* Brewer, *ut sup.*
[3] Patten *v.* Thompson, 5 M. and S. 356.
[4] Tanner *v.* Scovell, 14 M and W. 218.
[5] Turner *v.* Trustees of Liverpool Docks, 6 W. H. and G. 543.

in the goods to such person, so as to defeat the right of the *seller* to stop *in transitu*.[1] So, where the endorsement of the bill of lading is made for a valuable consideration,—as where a bill has been granted for the price,—though the accepter absconded before the bill was due,—it was held, that the right of the original seller to stop *in transitu* was gone, unless it be shown that the endorsee of the bill of lading had assisted in contravening the terms of the bargain,—or had reasonable expectations of rights connected therewith,—or by knowledge of the insolvency,—and the likelihood that the bill would not be retired or the price paid.[2] So, *where* barley was shipped, which the bill of lading made deliverable at the Port of London, to the shipper's order, and it was endorsed by him to corn factors in the city, to whom he was indebted, and who received it on 4th December:—in October preceding, a third party had, for their accommodation, accepted a bill for £350, and besides this, they were due him several hundred pounds, but it was in his knowledge that they had become embarrassed, and were unable to provide for this bill;—and for the purpose of covering him, they, of their own accord, on 6th December, endorsed to him the bill of lading, and made out a regular sale-note of the barley to him, but on the same day they stopped payment:—immediately thereafter, this third party endorsed the bill of lading to another, and made out a sale-note to him:—on arrival, the captain,—having received an indemnity from the consigner,—refused to deliver the barley to the endorsee of the bill of lading:—but it was held, that the consigner was not entitled to stop *in transitu*, against the onerous and *bonâ fide* endorsee, who had no notice of the consignee's insolvency.[3] Where, also, goods were shipped to a firm, and on a bill for the price being accepted, the bill of lading was endorsed to the firm, and was placed by the firm in the hands of their brokers, who had made advances on goods already in their hands, and also made advances on the endorsation to this bill of lading:—the firm became bankrupt, and their bill was dishonoured at maturity; and the goods having arrived after the bankruptcy, the consigner's agent gave notice to the captain to stop them:—but it was held, that the unpaid consigner had no right to take possession on the insolvency of the firm,—as the property and right of possession were vested in the brokers, the endorsees of the bill of lading for value.[4]

In order to put an end to the right of the seller or consigner to stop *in transitu*, it is not altogether necessary that the goods should have come to the actual manual touch, or to the corporeal possession, of the consignee or purchaser;—if they have arrived at the destined end of their journey, and are under the direction and control of the purchaser or consignee; or if, before they have thus arrived, he does actually receive possession of the goods, or does any act amounting to taking actual possession of them, the voyage of these goods is at an end, so as to exclude the right of the seller or consigner to stop them.

Thus, although, in the general case, the captain of a ship, either on general freight, or chartered by the consignee, is held to be a common carrier, in whose hands the goods, while in the course of transit, can be stopped,—yet, where a vessel has been hired by the consignee for a period

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[1] Lickbarrow *v.* Mason, 6 East, 30.
[2] Cuming *v.* Brown, 9 East, 506.
[3] Vertue *v.* Jewell, 4 Camp. 31.
[4] *In re* Westzinthius, 5 B. and Ad. 817.

of time, as for three years, and the goods were shipped by his order and in his name :—it was held that the delivery of the goods into his chartered ship was delivery to him, so as to defeat the seller's right to stop *in transitu.*[1] Where, also, goods have been delivered to a shipping company, to be forwarded to the consignee, and a receipt taken for them in his name: —it has been held, that the sellers lose their right to stop *in transitu.*[2] So, where goods are sent by water-carriage, and deposited in the carrier's warehouse at the end of the voyage, in the usual course of business between him and the consignee,—to be delivered out to the latter or to his customers as they should be wanted,—without being sent to his residence elsewhere :—it has been held, that the *transitus* is determined, and that the seller's right to stop *in transitu* is gone.[3] And where a Madras house, on 21st August, shipped goods in terms of orders from a Glasgow firm, and on account of that firm, and sent to the agents of the firm in London the invoice of the goods, stating them to be consigned to these agents on account and risk of the Glasgow firm, and a bill of lading acknowledging the goods to be shipped by the Madras house, and to be deliverable to the London agents or their assigns, on payment of freight, and advising the London agents that the Madras house had, "as usual, drawn upon you at six months for the amount of the invoice;"—the goods arrived in London on 21st October, and were received by the agents of the Glasgow firm under the bill of lading, and sold, and the proceeds retained by them; but they refused to accept the bill drawn for the price; and on 4th March following, the Madras house gave the London agents notice to stop the goods, and then brought an action to recover the proceeds of the sale :—but it was held, that the acceptance of the bill by the London agents was not a condition, and that the property in the goods belonged absolutely to the Glasgow firm, by delivery on board the ship, and sending the bill of lading to their London agents.[4] Where, however, goods were shipped free on board, and the agent of the sellers presented to the mate (the captain being absent) a receipt that the goods were shipped on account of the sellers,—which the mate kept, but refused to sign, and next day signed bills of lading deliverable to the orders of the purchasers, who became insolvent before the ship sailed :—it was held, that the transit of the goods was not at an end, and that, on the insolvency of the purchasers, the sellers were entitled to stop them.[5]

If the goods are delivered to any one representing the buyer, and authorised by him to receive them and give them a new destination, as to his clerk, agent, wharfinger, or warehouseman, who holds the goods for him and subject to his orders;—this delivery effectually deprives the seller of his right to stop.[6] In such cases, the right of stoppage depends upon—whether the party to whom the goods are delivered be the agent of the buyer to receive the goods *for him;* or, only to forward them in the course of their journey;—so as, in the former case, to make a delivery to the buyer's agent, the same as a full, complete, and final delivery to the buyer himself,—or, such a delivery to be merely a delivery to a carrier or agent,—as a means of conveyance to or on account of the buyer, *in the*

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1 Fowler *v.* M'Taggart, 7 T. R. 442.
2 Noble *v.* Adams, 7 Taunt. 59.
3 Allan *v.* Gripper, 2 Tyrwh. 217.
4 Kay *v.* Cotesworth, 7 W. H. and G. 595.
5 Ruck *v.* Hatfield, 5 B. and A. 632.
6 Rowe *v.* Pickford, 8 Taunt. 83.

ordinary course of passage. In the former case, the transit is at an end,—in the latter, it is not. Therefore, where goods have so far got to the end of their journey as to wait for orders from the buyer, to put them again in motion,—to communicate to them another substantial destination,—and, without such order, they would remain stationary,—such delivery is the same as an actual delivery to the buyer himself.[1] As, when a purchaser received notice from the carrier of hogsheads having arrived, and he took samples from them, and, for his own convenience, desired the carrier to let them remain in his warehouse until he received further directions; and, before they were removed, the purchaser became bankrupt:—it was held, that the transit of the hogsheads was at an end.[2] And when a specified quantity of oats in a particular bin (which contains nothing else) are sold, and at same time bill granted for the price,—though the delivery-order describes the oats by the weight as well as by the bin, and directs the warehouseman to weigh them over,—the property passes to the purchaser, and the seller cannot thereafter stop them.[3] But where goods were purchased by commission agents, to be sent to a house in Lisbon, and the goods were sent to the warehouse of these agents, who were packers and warehousemen, as well as the general agents of the buyers,—and who were to forward them to Lisbon, the place of their final destination,—and the buyers having failed, the goods were stopped in the agents' hands:—it was held, that the *transitus* continued until the goods reached Lisbon, and that the sellers had a right to stop them in the hands of the agents.[4]

If goods are sold while in the hands of a wharfinger, warehouseman, or broker, and a delivery-order given,—and nothing remains to be done on the part of the seller, as weighing, measuring, &c., preceding the actual delivery,—notice to the wharfinger, &c., of the sale,—or entry of the buyer's name in his books,—or payment of warehouse rent by the buyer,—or by his marking the goods as his,—puts an end to the *transitus.*[5] But where something remains to be done,—as between buyer and seller,—such as weighing, measuring, &c.,—to complete the separation and delivery,—and, without which being done, a complete delivery cannot be made,—the goods are held to be still *in transitu,* and can be stopped by the unpaid seller. As, where a quantity of rosin lying in the warehouse of the seller. had been sold and the price paid, and the first purchasers sold it to another, and gave him a delivery-order on the original seller, which was lodged with him, but the rosin was not weighed, nor any other delivery taken before the second purchaser became bankrupt, and the first purchaser stopped its delivery:—it was held, that, until everything was done in weighing, &c., the delivery was not complete, and that, therefore, the stoppage was in time.[6] And where a quantity of flax, part of a larger quantity lying in mats at a wharf, was sold, and a delivery-order on the wharfinger given to the purchaser;—the quantity delivered had to be ascertained by the wharfinger weighing it,—the mats being of unequal quantities, and a fraction of a mat might be required;—before this was done, the purchaser stopped payment, and the seller countermanded the

[1] Dixon *v.* Baldwin, 5 East, 175.
[2] Forster *v.* Frampton, 6 B. and C. 107.
[3] Swanwick *v.* Sothern, 9 A. and E. 895.
[4] Coates *v.* Railton, 6 B. and C. 422.
[5] Harman *v.* Anderson, 2 Camp. 243; Hawes *v.* Watson, 2 B. and C. 540.
[6] Withers *v.* Lys, 4 Camp. 237.

order for delivery :—this was held to be a good stoppage.[1] Where, also, a quantity of hops, in the warehouse of the seller, was sold, and part was weighed and samples given, with a note of the weight and an invoice ;—no time of delivery or payment was specified ;—but, while the hops continued in the seller's possession, the purchaser became bankrupt :—it was held, that the seller had a stronger right to retain, when he had never parted with the goods, and the *transitus* had not begun.[2] And where goods were forwarded in bales to London, deliverable to a firm or their assigns, who were factors for sale, and were landed at a wharf ;—the firm gave orders to the wharfinger to weigh and deliver the goods to a merchant, who had contracted with the firm for the purchase of them ;—they were accordingly weighed, and an account of the weights sent to the firm, who made out invoices to the merchant ;—the latter sold several bales of the goods, which were delivered by the wharfinger upon his orders, to the parties to whom he had sold them, but the rest remained at the wharf until they were stopped by the firm, as the unpaid sellers ; they were never transferred in the wharfinger's books from the name of the firm to that of the merchant, nor was any warehouse rent paid by him :—it was held, that the wharfinger never stood in the relation of wharfinger to the merchant, and that, under the above circumstances, the right of the firm to stop *in transitu* was not determined by the part delivery to the merchant's orders.[3]

When the goods are delivered to a warehouseman, to whom the buyer pays warehouse rent ;—or when they remain in the seller's warehouse, but are locked up, and the key delivered to the seller ;—or where the seller receives warehouse rent from the buyer for the goods remaining in his warehouse, after the time they should have been removed,—the delivery is complete, and the *transitus* is at an end.[4] Where, also, the wharfinger, with the knowledge and assent of the seller, charges the buyer with the warehouse rent,—or if the buyer lodges with the wharfinger an order from the seller to deliver the goods to the buyer,—these being in a deliverable state, and the wharfinger changes the goods in his books to the name of the buyer,—in such case, the *transit* is at an end.[5] So, also, where timber was sold on credit, and, before the expiry of the credit, the buyer resold it, and the second purchaser, in presence of the original seller, marked the timber as his :—it was held, that the original seller could not, on the failure of the first buyer, stop the timber as *in transitu*.[6] And when the mark on goods in a warehouse is changed, by the direction of the parties, from the seller's mark to the mark of the purchaser—this is held to determine the transit.

Though the general rule is, that, when goods are to be delivered to the buyer at a particular place, the *transitus* continues until they are delivered to him at that place, but if he, by his own act, anticipates the delivery, which would otherwise, in the ordinary course, take place, and does any act equivalent to taking possession, the *transitus* is thereby terminated. It has been doubted whether the act of marking or taking samples, or the like, without removal of any part of the goods

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1 Busk *v.* Davis, 2 M. and S. 397.
2 Bloxham *v.* Sanders, 4 B. and C. 948.
3 Tanner *v.* Scovell, 14 M. and W. 28.
4 Hurry *v.* Mangles, 1 Camp. 552.
5 Harman *v.* Anderson, 2 Camp. 243.
6 Stoveld *v.* Hughes, 14 East, 308.

from the carrier's possession, though done with the intention of taking possession, will amount to a constructive delivery,—unless this is accompanied with such circumstances as will indicate that the carrier was intended to keep, and assented to keep, the goods, as an agent for custody; and, where there is no act done with an intention to take possession, or for forwarding to a new destination assigned by the purchaser, except mere touching by the buyer's agent, in the absence of any other act of ownership,—unless there be a contract, express or implied, with the carrier, that the relation in which he stood before, as the mere instrument of conveyance to an appointed place, shall be altered, and he become the agent of the purchaser or consignee,—there is no constructive possession on the part of the latter.[1]

This right of stoppage *in transitu* is not defeated by the goods, on arrival by sea, being delivered as the goods of the consignee to a wharfinger, who receives and places them to the consignee's account, and pays freight and charges, for the purpose of forwarding them to him, but in whose possession the consignee exercises no act of ownership over them.[2] And the same holds good in the delivery to a general packer appointed by the buyer;[3] unless he be the special agent of the consignee, and his warehouse the last place of delivery.[4] Nor will this right of the seller be defeated by the goods, while under transit, being attached by legal process at the instance of a creditor of the consignee;[5] or on account of a general lien by the agent of the consignee;[6] nor by the carrier's delivering, through mistake, to the buyer, after notice to stop has been given;[7] nor will this right be taken away by the goods being shipped on board a barge, with a ticket bearing the buyer's number, and the carrier, having landed a part at the buyer's wharf, reloaded it, on finding the buyer had absconded; and a clerk having desired the carrier to take the goods on his own account, he took the whole to his own premises, to secure his freight and charges;[8] nor by goods being delivered to a commission agent, who had bought them for his constituents in Lisbon, and who was to forward them there, when they were stopped by the seller in his warehouse;[9] nor by an invoice being sent the buyer, stating the goods as bought and shipped on his account and risk, and the goods being consigned to a wharfinger for him, at whose wharf they arrived after he had committed an act of bankruptcy, and were there stopped by the seller, before the buyer had done any act of ownership;[10] nor by the seller giving the buyer's agent an order for delivery of the goods, which he endorsed to a keelman, who received the goods, and put them on board a vessel for London, where they arrived on 21st June, and wharfingers undertook the delivery; but on that day the buyer failed: and, on his demanding the goods from the master, two days after, th master refused delivery, though the freight was tendered, alleging that the wharfingers had stopped them; and on the 28th, a letter came from the seller ordering the goods *to be stopped in transitu.*[11]

It is always a question of fact:—for what purpose a warehouseman or

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[1] *Per* Parke, B., in Whitehead *v.* Anderson, 9 M. and W. 533.
[2] Edwards *v.* Bower, 2 M. and W. 37; Jones *v.* Jones, 8 M. and W. 432.
[3] Hunt *v.* Ward, 3 T. R. 467.
[4] Swanwick *v.* Sothern, 9 A. and E. 900.
[5] Smith *v.* Goss, 1 Camp. 282.
[6] Nicholls *v.* Le Feuvre, 2 Bing. N. C. 83.
[7] Litt *v.* Cowley, 7 Taunt. 169.
[8] Clawshay *v.* Eades, 1 B. and C. 181.
[9] Coates *v.* Railton, 6 B. and C. 422.
[10] Tucker *v.* Humphrey, 4 Bing. 516.
[11] Jackson *v.* Nicholl, 7 Scott, 583.

wharfinger receives possession of the goods for the buyer; and, therefore, the proper question is—whether the warehouseman or wharfinger received the goods as the agent of the buyer, to take possession of them for his benefit as owner,—or as agent only, to forward them to the buyer,—or to keep them for the seller;[1]—and declarations made by the buyer to a third party, of his intention not to take the goods though landed at the warehouse of a wharfinger, which he used as his own, and that the seller ought to have them, are admissible in evidence, although these were not communicated to the seller or wharfinger.[2]

When the ship, on board of which the goods are, has to perform quarantine before entering her port of destination, and the goods have to be purified before being admitted,—the *transitus* continues until quarantine be performed: and therefore, during the performance of it, the seller is in time to stop, and this right will not be defeated by any act done by the buyer during that time. As, where a company ordered goods, which were shipped and bills of lading sent; but, before the ship arrived, the company was bankrupt, and the consigner sent one of the bills of lading to stop delivery; the ship was sent to perform quarantine, and one of the assignees of the bankrupts went on board, claimed the goods, opened some of the chests, and placed two persons on board to keep possession during the quarantine; and, before it was expired, notice was given the captain not to deliver:—it was held, that in order to defeat this right, the consignees must receive delivery *at the end of the voyage*, and could not *go out to meet the ship and take possession;* and that here the voyage was not completed till the ship had performed quarantine, and till then the goods were *in transitu*.[3]

But when the ship, with the goods, has arrived at her port of destination, and while the goods were still on their passage, the captain and the consignee of the ship received notice of stoppage from a party, not the general agent of the shipper, nor specially authorised by him to give such notice, but which notice the shipper, by his duly appointed attorney, adopted and confirmed, though this was after a formal demand of the goods had been made by the bankruptcy assignees of the parties for whom the goods were originally shipped:—the goods having been delivered to the party who had given the notice, it was held, that there could be no effectual stoppage after the demand by the assignees, and that the ratification by the shipper was too late.[4]

If bills are drawn for the price of goods shipped, and if the shipper intends to retain his property in the goods, in case these bills are not accepted or not paid, or in case the purchaser or consignee may have failed,—he should transmit to the latter an *unendorsed* bill of lading (taken, of course, to the shipper or assigns), and an *endorsed* one to his own agent, with proper instructions how to act, according to circumstances.

And when a ship has arrived at her port of destination, and delivery of part of an entire cargo or parcel of goods is made to the consignee, without any intention to retain the rest, this is held to be a complete delivery of the whole, so as to terminate the *transitus*. As, where a cargo of wheat was shipped and bills of lading taken, deliverable to the buyers,

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[1] James *v.* Griffin, 1 M. and W. 20.
[2] Ibid., 2 M. and W. 623.
[3] Holst *v.* Pownal, 1 Esp. 242.
[4] Bird *v.* Brown, 4 W. H. and G. 786.

and a bill drawn and accepted for the whole, and the buyers sold the wheat to a third party, and on the ship's arrival, the cargo was entered at the custom-house in name of *his* agents, who took out 800 bushels on his account; but, on the failure of the first buyers, the original sellers gave notice to the captain to stop delivery:—it was held, however, that the *transitus* was ended by the delivery of the 800 bushels, which must be taken to be a delivery of the whole, no intention appearing, either previous to, or at the time of the delivery, to separate part of the cargo from the rest.[1] But, where there is an intention to separate a part from the whole, and that is delivered as a part only,—as where the buyer, or a purchaser from him, is allowed by the original seller to take away a part, not with the intention to take away or deliver the whole,—the delivery is not complete, and the seller's right to stop is not at an end.[2]

The notice not to deliver must be given in writing to the person who has the immediate custody of the goods, or to his principal; and if this notice be given to the latter only, it must be so given, at such time, and under such circumstances, as he may, by exerting reasonable diligence, communicate it to his servant, in time to prevent delivery. As, where timber was shipped from Quebec to Fleetwood in Lancashire, and a notice of stoppage was given, while the goods were on the voyage, *to the shipowner at Montrose in Scotland*, upon which the shipowner sent a letter to await the arrival of the captain at Fleetwood, directing him to deliver to the agents of the seller:—this was held not to be a sufficient notice of a stoppage *in transitu*.[3] But if, after an effectual notice to stop has been given, the goods be delivered to the party against whom the notice has been used, the shipowner or captain will be liable for the loss that may be thereby sustained.[4]

It is not for the shipowner, or his captain, to dispute whether a notice not to deliver be properly given or not. As a carrier, his duty is plain, to convey the goods on board in terms of his bills of lading; and if notice has been given, either at the commencement or at the termination of the voyage, not to deliver the goods, in the one case, the owner, and, in the other, the captain, should intimate to the shipper, or to the consignee, and to the party giving notice, that the goods will be retained on board during the lay-days, but that then they will be landed, and as much of them sold under proper authority, as will pay the freight, charges, and expenses.

There can be no exercise of this right by the merchant who has consigned goods for sale to his factor or agent, and intrusted to him the documents of title to such goods, or with the means of obtaining these, as tokens of the ownership of the goods. This is the relation of principal and factor, and that connection is regulated by the Acts 6 Geo. IV., cap. 94, and 5 and 6 Vict., cap. 39, well known as the Factors Acts.

By the former it is enacted, that the person in whose name goods are shipped by any other person, is deemed to be the true owner thereof, so as to entitle the consignee to a lien thereon, in respect of any money or negotiable security advanced by him to such person, or received by such person for his use, if he has not notice, by the bill of lading or otherwise, at or before the advance or receipt, that such person is not the actual and true

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[1] Sluby *v.* Heywood, 2 H. Blac. 504.
[2] Bunney *v.* Poyntz, 4 B. and Ad. 568.
[3] Whitehead *v.* Anderson, 9 M. and W. 518.
[4] Bohtlingk *v.* Inglis, 3 East, 381.

owner of the goods; and such person is to be taken, for the purposes of the Act, to have been *intrusted* with the goods for consignment or sale, unless the contrary be made to appear.[1] A person intrusted with and in possession of a bill of lading, or any of the warrants, certificates, or orders mentioned in the Act, is to be deemed the true owner of the goods described therein, to the effect of giving validity to any contract or agreement for the sale or disposition of the goods, or the deposit or pledge thereof,—if the buyer, disponee, or pledger has not notice, by the document or otherwise, that such person is not the actual or true owner.[2]

Under this last section it has been held, that the negotiable instruments mentioned as a security are such as pass by endorsement and delivery, as bills of exchange and promissory notes, and not East India warrants or other documents of that nature:[3]—that, in order to make a factor a party *intrusted* with a dock warrant, within the meaning of the section, it must appear that the owner of the goods intended that the factor should be possessed of it at the time of the pledge, or that he should exercise the power which the possession of the bill of lading gave him, of obtaining the dock warrants whenever he, in his discretion, should think fit:[4]—and that a party, intrusted with a bill of lading for the purpose of selling the customs goods mentioned in it, is not, in consequence of his being so intrusted, to be considered as intrusted with the dock warrant for these goods, in the meaning of this section.[5]

It is also enacted, that if such person deposit or pledge the goods or documents so intrusted or possessed, as security for a previous debt or demand, the party who so takes the deposit or pledge, without notice as aforesaid, only acquires the same right, title, or interest, and no further or other, than was possessed by the party making the deposit or pledge.[6] But this section does not prevent the owner of the goods from bringing an action for their recovery against the person who takes them in pledge, only he can recover no more than the balance, after deducting what is due to the factor.[7]

It is also enacted, that any person may contract for *the purchase* of goods, with any agent intrusted with the goods, or to whom they may be consigned, and receive and pay for the same to the agent, notwithstanding he may have notice that the party with whom he contracts is an agent, if such contract and payment be made in the ordinary and usual course of business, and he has not, at the time of contract or payment, notice that the agent is not authorised to sell or to receive the price.[8] It has been held, that a wharfinger who received flour in that capacity, but without any authority to sell, is not within this provision, although he was in the habit of doing business as a flour factor.[9] And any person may accept goods, or any such document as aforesaid, on deposit or pledge, from any agent or factor, notwithstanding he may have notice that the party is a factor or agent; but, in such case, he only acquires the same right, title, and interest, and no further or other, than was possessed by the factor or agent at the time of the deposit or pledge.[10] It has been held, that where a broker, having accepted bills for his principal, on the security of

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[1] Sec. 1. [2] Sec. 2. [3] Taylor *v.* Kymer, 3 B. and Ad. 320.
[4] Philips *v.* Huth, 6 M. and W. 605. [5] Hatfield *v.* Philips, 9 M. and W. 656.
Sec. 3. [7] Taylor *v.* Trueman, 1 M. and M. 453. [8] Sec. 4.
[9] Monk *v.* Whittenbury, 2 B. and Ad. 484. [10] Sec. 5.

goods then in his hands, pledged the goods with the person who had notice of the agency, but the broker did not inform his principal of this transaction,—he could only transfer such right as he had, which was a right to be indemnified against the bills he had accepted, and that the principal, having satisfied these bills, was entitled to have back his goods from the pledgee, without paying the amount for which they were pledged.[1]

But, as this Act was defective, in so far as, under it, advances could not be safely made on goods or documents to persons known to have possession as agents only, it was necessary that the same protection should be given to advances on goods as to sales—that owners, who would be bound by a contract of sale, should be bound by a contract of lien; and as the Act did not protect exchanges of securities—the Act 5 and 6 Vict., cap. 39, therefore enacted, that any agent intrusted with the possession of goods, *or of the documents of title to goods* (see sec. 4, *infra*), is to be deemed and taken to be owner of such goods and documents, so far as to give validity (effect) to any contract or agreement, by way of pledge, lien, or security, *bona fide* made by any person with an agent so intrusted, as well as for any original loan, advance, or payment, made upon the security of such goods and documents, as also for any *further* or *continuing advance* in respect thereof,—which contract or agreement is binding upon, and good against, the owner of the goods, and all other persons interested therein, notwithstanding the person claiming such pledge or lien may have had notice that the person with whom the contract is made is only an agent.[2]

Under this section it has been held, that a contract made with an agent for the pledge of goods is effectual as against the principal, though the person contracting with the agent knows that he is only an agent in regard to the goods pledged, but he deals with the agent fairly and honestly, and without knowledge of the agent acting in bad faith and beyond his authority:—and to deprive the pledgee of the protection of the Act, he must be proved to have had knowledge that the agent was thus acting in bad faith and beyond his authority, and a mere suspicion will not be held as this knowledge, nor will a knowledge that the agent has power to sell be held as a knowledge that he has not power to pledge the goods.[3] And, when an agent, intrusted with a document of title of goods, pledges it, in breach of trust or without authority,—in order to deprive the transaction of the protection of the above section, and to bring it within the 3d section (*infra*),—it is necessary that the lender have notice of the agent's act being in breach of trust or without authority;—and to prove this notice, it is sufficient to show that the circumstances attending the transaction would certainly lead any reasonable man and a man of business to conclude that the agent had not authority to make the pledge, or that he was committing a breach of trust toward his principal.[4]

When any such contract or agreement for pledge, lien, or security is made in consideration of the delivery or transfer to such agent of *any other goods or merchandise, or documents of title, or negotiable security*, upon which the person so delivering had, at the time, a valid and available

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[1] Fletcher *v.* Heath, 7 B. and C. 517. [2] Sec. 1.
[3] Navulshaw *v.* Brownrigg, 2 De G. M. and G. 441.
[4] Chunder Sein *v.* Administrator-General or Ryan, 8 Jur. *n. s.* 343.

lien and security, in respect of a previous advance by virtue of some contract or agreement made with such agent, such contract or agreement, if *bona fide* made on the part of the person with whom the same is made, is to be deemed to be a contract made, in consideration of an advance, within the true intent and meaning of the Act, and to be as valid and effectual, to all intents and purposes, and to the same extent, as if the consideration for the same had been an actual present advance; but the lien acquired, under the last-mentioned contract or agreement, upon the goods or documents deposited in exchange, cannot exceed the value, at the time, of the goods which, or the documents of title to which, or the negotiable security which is delivered up and exchanged.[1]

Bankers having made advances to S. L., at the request of L. L., and having a lien for these advances on certain goods lodged in their possession, —it was agreed between the bankers and L. L., that, on their delivering these goods to him, he should deliver to the bankers certain other goods intrusted to him by a third party, his principal,—to be held by them as a security in place of the other goods, and for any further advances to be made to S. L., as requested by L. L.; and the agreement was carried into effect, and further advances made to S. L.:—it was held, that, as the bankers had no notice of the third party's title, the transaction was protected by this section of the Act.[2]

The Act is to be construed to give validity to such contracts and agreements only, and to protect only such loans, advances, and exchanges, as are made fairly and honestly, and without notice that the agent making such contracts or agreements has not authority to make the same, or is acting in breach of trust in respect thereof, against the owner of such goods and merchandise; and nothing is to be construed to extend to or protect any lien or pledge for any antecedent debt owing from the agent with or to whom any such lien or pledge may be given, nor to authorise any agent, intrusted as aforesaid, in deviating from any express orders or authority received from the owner, but for the purpose and to the intent of protecting all such fair and true loans, advances, and exchanges as aforesaid (though made with notice of the agent not being the owner, but without any notice of the agent acting without authority), and to no further, or other, intent or purpose,—such contract or agreement, as aforesaid, is to be binding on the owner, and all other persons interested in the goods.[3]

A document of title, within the meaning of the Act, is any bill of lading, India warrant, dock warrant, warehouse-keeper's certificate, warrant, or order for the delivery of goods, or any other document used as proof of the possession or consignment of goods, or authorising, or purporting to authorise, either by endorsement or delivery, the possessor of such document to transfer or receive the goods thereby represented; and any agent intrusted as aforesaid, and possessed of any such document of title, whether derived immediately from the owner, or obtained by reason of such agent being intrusted with possession of the goods represented by such document, and all contracts pledging or giving a lien upon such documents as aforesaid, are to be deemed and taken to be respectively pledges of, and liens upon, the goods to which the same relate; and such agent is to be deemed to be possessed of such goods or documents, whether the same be in his

[1] Sec. 2. [2] Sheppard *v.* Union Bank of London, 7 H. and N. 661. [3] Sec. 3.

actual custody, or be held by any other person subject to his control, or for him, or on his behalf. When any loan or advance is truly made to any agent intrusted with, and in possession of, any such goods or documents of title, on the faith of any contract or agreement in writing, to consign, deposit, transfer, or deliver such documents, and such goods or documents are actually received by the person making the loan or advance, the same is to be deemed and taken to be a loan or advance upon such goods or documents within the meaning of the Act, though such goods or documents be not actually received by the person making the loan or advance, till a period subsequent thereto. Any contract or agreement, whether made direct with the agent, or with any clerk or other person on his behalf, is to be deemed a contract with such agent; and any payment made, by money, bills of exchange, or other negotiable security, is to be deemed and taken to be an advance within the meaning of the Act; and an agent in possession, as aforesaid, of such goods or documents, is to be taken, for the purposes of the Act, to have been intrusted therewith by the owners thereof, unless the contrary be shown in evidence.[1]

Nothing contained in the Act lessens, varies, alters, or affects the civil responsibility of an agent for any breach of duty, or contract, or non-fulfilment of his orders or authority, in respect of any such contract, agreement, or pledge;[2] but nothing in the Act prevents the owner from having right to redeem the goods or documents pledged as aforesaid, at any time before the goods have been sold, upon repayment of the amount of the lien thereon, or restoration of securities, in respect of which such lien may exist, and upon payment or satisfaction to such agent, if by him required, of any sum of money for which such agent would by law be entitled to retain the same goods or documents, or any of them, by way of lien, as against the owner, or to prevent the owner from receiving from such person, with whom any goods or documents may have been pledged, or who has any lien thereon as aforesaid, any balance remaining in his hands, as the produce of the sale of the goods, after deducting the amount of the lien, under such contract or agreement, and, in case of the bankruptcy of the agent, the owner of the goods so redeemed is, in respect of the sum so paid by him, on account of such agent, for that redemption, to be held to have paid such sum for the use of the agent before his bankruptcy; or, in case the goods be not so redeemed, the owner is to be deemed a creditor of the agent, for the value of the goods so pledged, at the time of the pledge; or, if he thinks fit, may in either of such cases, prove for, or set off the sum so paid, or the value of the goods, as the case may be.[3]

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[1] Sec. 4. [2] Sec. 5. [3] Sec. 7.

VII.—FREIGHT AND ITS ADJUNCTS.

The sum agreed to be paid for the conveyance of goods in a ship, is termed freight, and it is the general rule, that *freight* is only due for properly bringing the goods to their place of destination, as stated in the charter-party or bills of lading. Usually, the freight is agreed for, either as a gross sum for the whole voyage,—or at so much per ton of the ship's burden,—or according to the size, weight, &c., of the goods shipped,—or by time, at so much per month, &c.; but, in whatever manner freight may be made payable by the agreement of parties,—by law, no freight is due until the voyage is completed.

Freight may be considered under the following divisions:—1. When freight can be claimed *pro rata itineris*,—according to the proportion of the voyage performed: 2. When whole freight due: 3. Liability for demurrage: 4. Lien for freight: 5. Parties liable to pay freight.

I.—FREIGHT PRO RATA ITINERIS.

By his bill of lading, the shipmaster acknowledges the goods stated therein to have been shipped in good order and condition, and he thereby undertakes to deliver the same goods, in the like good order and condition, at the named port of destination, to the party named, he or they paying freight for the said goods, either as per charter-party, or at the rates specified per ton, cwt., &c. It is plain, therefore, that freight is not due in terms of the bill of lading, unless the goods are ready to be delivered at the port of delivery, to the party then in right of the bill of lading. "The freighter undertakes that, if the goods be delivered at the place of their destination, he will pay the stipulated freight; but, it was only in that event—viz., of their delivery at the place of destination, that he, the freighter, engaged to pay anything. *If the ship be disabled from completing her voyage, the shipowner may still entitle himself to the whole freight, by forwarding the goods, by some other means, to the place of destination; but he has no right to any freight if they be not so forwarded unless the forwarding of them be dispensed with, or unless there be some new bargain on the subject.*" [1]

The case of goods forwarded by another ship to their port of destination, will be considered afterwards; but keeping in view the general rules, that freight is due only for the carriage, and on the safe delivery of the goods,—and that, when the ship is rendered incapable of completing the voyage, and the shipmaster does not forward the goods, the shipper is entitled to his goods without paying any freight,—it is here to be considered, under what circumstances freight can be claimed for that portion of the voyage which has been performed. It will be proper, therefore, to detail some such cases in which the shipowner was held not to be entitled to any freight,—and, on the other hand, in which he was held entitled to freight, according to the proportion of the voyage the ship had accomplished.

In the case now cited, the ship was chartered for a voyage from Falmouth to Honduras,—there to load a cargo of mahogany and other timber, and from thence to London;—having taken in her cargo and sailed, the

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1 *Per* Lord Ellenborough, in Hunter *v.* Prinsep, 10 East, 378.

ship encountered a storm, and had to put into Savannah, Georgia, for repairs, the expense of which was paid by the sale there of part of her cargo; —she sailed from Savannah, and was taken by a French privateer, but she was retaken by a British sloop-of-war, near the island of Guadaloupe, and sent to St. Kitts, and was there driven on shore in a hurricane and wrecked. The rest of the cargo was saved, and afterwards sold by the captain, acting according to the best of his judgment (but so sold improperly, as was held), *without any communication with the merchant shipper*, and the proceeds of the sale were remitted to the shipowner:—to an action by the merchant against the shipowner for these proceeds,—the latter pled, that he was entitled to retain the whole or at least part for freight,—but it was held, that the owner was not entitled to any portion of freight.[1]

In another case, a ship was chartered to take a cargo of coals from Shields to Lisbon, and to sail with convoy,—and, having loaded the cargo, she sailed to Portsmouth and joined convoy, and sailed therewith to Lymington, and was there detained some time by contrary winds; at last, the sailing instructions for convoy were recalled, and the ship returned to Spithead,—the ports of Portugal being shut against British ships, and Portugal occupied by the French;—at the end of about two months, the captain required the freighters to land the coals, and intimated, that, unless this was done, he would land and warehouse them at their risk and expense, reserving claim for freight, demurrage, &c.; but, the freighters did not consent, and, after remaining on board about other two months longer, the captain, after again intimating to the freighters, landed the coals, which were afterwards sold by mutual consent, without prejudice to either party; —and, an action having been brought against the merchant freighter for recompense according to the portion of the voyage performed, and for the ship's detention; it was held, that, *as there had been no agreement to accept the goods*, they had been landed and sold without prejudice to either party, and, as the freight was made payable in one event only,—a right delivery of the cargo,—which had not taken place,—therefore, the shipowner was not entitled to any freight.[2]

And, in another case, a cargo of rice was shipped at Batavia, and was, by the bill of lading, to be delivered to the shipper at Rotterdam, he paying freight for the same; but, the ship, having encountered a hurricane, was compelled to put into the Mauritius, where the rice, having been found damaged, and in a state of rapid putrescence, was, from necessity, sold by the captain, who acted fairly and honestly, but *without the knowledge of either the shipper or the shipowner*:—it was held, that, under these circumstances, no freight was due, either for the whole voyage or for the performed portion of it.[3] In this case, it was stated from the bench:—"If we suppose that the captain, instead of being captain, had been supercargo, and that his sale of the goods had been equivalent to a sale by the shippers themselves present at the Mauritius,—*there would have been no reasonable ground to infer* (*conclude*) *a new contract to pay a proportional freight;* for the shipowner was not ready to carry forward to the port of destination in his own or another ship, and consequently, no inference could arise *that the shippers were willing to dispense with the further carriage, and accept*

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[1] Hunter *v.* Prinsep, *ut sup.* [2] Liddard *v.* Lopez, 10 East, 526.
[3] Vlierboom *v.* Chapman, 13 M. and W. 230.

the delivery at the intermediate, instead of the destined port. If the cargo is sold at an intermediate port for the benefit of all concerned, no freight is due."[1]

Then, there are the cases in which, though the goods were saved, but the ship did not proceed to the port of destination,—the shipowner was held entitled to a proportional share of the freight from the freighter. As, in one case, the ship was on a voyage from Newfoundland to Lisbon, and, when within four days' sail of Lisbon, was captured by a French privateer, and, some days after, was recaptured by an English privateer; *and the freighters took their goods of the recaptors and paid salvage*:—in an action by the shipowners for freight,—it was held, that they should recover freight for half of the cargo shipped,—the other half being taken as lost by the salvage,—in the proportion of the seventeen days of the voyage accomplished, to the twenty-one days within which the voyage would have been completed, if the capture had not happened.[2]

In another case, the ship was chartered for a voyage from London to Solada on the River Plate,—to deliver her cargo either there or at Buenos Ayres,—and there reload, and proceed to a port between Gibraltar and Antwerp, as the freighter's agents might direct,—and the freight for the voyage out and home was payable in certain proportions;—the ship arrived at Buenos Ayres, and her homeward voyage was appointed by the freighter's agents to Gibraltar; but the ship and about one-third of the cargo having been lost by the perils of the sea, the rest of the cargo was left by the captain with the vice-consul at the island of Fayal, who hired a vessel on behalf of the owners of the cargo, and forwarded the goods to Gibraltar, and delivered them there to the freighter, who received them there, and paid the freight and charges from Fayal:—in an action by the shipowner for freight from Buenos Ayres to Fayal, it was held, that the goods left at Fayal, and forwarded to Gibraltar by the vice-consul, acting in the name and on behalf of the owners of the cargo, cannot be said to have been carried to their destination by the shipowner, in fulfilment of the charter-party, and, consequently, that the freight agreed by it to be paid, had not been earned,—but, *as the ship actually brought from Buenos Ayres to Fayal, on her way to Gibraltar, a considerable portion of her cargo put on board at Buenos Ayres, which portion had come to the hands of the freighters*,—the shipowner had a claim to proportional freight, not according to the agreement, but, upon an implied contract to recompense him for service performed, from which the freighters have received a benefit.[3]

And, it has been held, that the shipowner has no claim to freight, in respect of the portion of a voyage that the ship may have accomplished, but, on the other portion of which she has been rendered incapable of proceeding,—unless there is such an acceptance (an approving reception and taking possession) of the goods by the shipper, at an intermediate port or place of necessity, from which the laws can imply a new agreement for freight according to the portion so accomplished.[4]

Thus, then, the law stands,—if the original ship is so disabled as to be incapable of proceeding, and the shipmaster cannot, or will not, proceed to complete the voyage, and earn freight,—the shipper is, in such case, entitled to the cargo, or to his goods, without any allowance for freight; but,

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1 *Per* Parke, B., in Vlierboom, *ut sup.*
2 Luke *v.* Lyde, 2 Burr. 882.
3 Mitchell *v.* Darthes, 2 Bing. *n. c.* 555.
4 *The Newport*, 1 Swabey, 335.

if the shipmaster is willing and ready to forward his ship's lading to the port of destination by another conveyance, while the freighter or the shippers receive and take possession of the cargo, or of their respective goods, at the intermediate port or place of necessity, without requiring him to do so, by a substituted transport,—in this case, the party or parties so taking possession of cargo or goods, will be liable to the shipowner,—not, in any sum as *freight*, properly so called, because the condition on which alone *freight* was to be payable, viz., on a right and true delivery of the cargo or goods at the port of destination, cannot be fulfilled,—but, in an adequate requital or recompense to the original ship, according to the progress she may have made in performing the agreed-for voyage.

But this uncertainty may be removed, and the probability of losing freight be avoided, by inserting a stipulation in the charter-party, to the effect, that, if the ship be rendered innavigable by the perils of the sea, but, if the cargo or a portion of it be saved and landed at an intermediate port or place,—the shipowner's lien (claim of retention) on the goods so saved and landed, shall still endure thereon, and, if such goods are claimed and taken possession of by the shipper,—or are abandoned by him to his underwriters,—then, the shipper shall be liable to the shipowner in such recompense for the portion of the voyage that may have been accomplished when the goods were landed at the port or place of necessity, according as this recompense shall be adjusted and awarded by arbitration.

Similar terms can also be inserted in the bills of lading; and this stipulation will only be a fair and equitable provision as to both parties in the event now mentioned:—to the shipowner, it will ensure an equitable recompense for the hire of his ship for the period preceding her innavigability,—and, to the shipper, it can bring no loss,—as it is the practice, in estimating the value of goods shipped preparatory to effecting an insurance, to include the *whole* freight to the port of destination, and, if the whole goods saved have been abandoned to the underwriters, this whole freight is recovered, and, if a *partial* loss only is claimable, in this also a partial freight is included.

But, when the cargo is not of a perishable kind, and the original ship is capable of being repaired and made seaworthy *for proceeding on her voyage*, and the means are at hand of thus rendering her seaworthy, which the shipmaster judges it proper so to do, within a reasonable time,—he can, in such reasonable time, repair his own ship and forward the cargo by her to its proper destination,—or, he can tranship the cargo into any other capable vessel or vessels, and so forward it, and thereby earn the full agreed-on freight. These will be considered more fully under a subsequent division.

II.—WHOLE FREIGHT DUE.

Freight is the name of the hire or reward payable to the owner of a ship for the safe and proper conveyance of goods in his ship, and the due and safe delivery of these goods at the appointed port or place. For this purpose, the whole ship may be hired for one whole sum, and the freighter is entitled to stow as many goods as she can reasonably carry, in the places usually adapted for cargo,[1]—and in the full reach of the hold from

[1] Michelson *v.* Nicol, 7 W. H. and G. 929.

bulkhead to bulkhead (but not on deck),[1]—so as to load a full and complete cargo; and, when the whole ship is thus freighted, and the freight is to be paid as a gross sum, the whole freight is due, though the freighter does not fully load the ship. And, if the charter-party be of the whole ship, and the freight to be paid at so much per ton, or other portion of the ship's capacity, the freight must be paid according to the actual tonnage and capacity of the vessel, and not merely according to the registered tonnage; and, therefore, where, in the charter-party, the vessel was described to be of the burden of a certain number of tons, and the freighter agreed to load a full and complete cargo,—the loading of goods equal in number of tons to the tonnage mentioned in the charter-party, was held not to be a performance of this agreement, but that the freighter was bound to put on board as much goods as the ship was capable of carrying with safety.[2] And, when a ship was chartered to load a full cargo of produce, and deliver the same, on being paid freight at a certain rate "per barrel of flour, meal, and naval stores," and at a certain rate "per quarter of 480 lbs. for Indian-corn or other grain;" and the cargo was to be of not less than 3000 barrels of flour, meal, or naval stores, and not less of flour or meal than of naval stores was to be shipped:—on the ship's arrival here, the cargo was composed of 769 hogsheads tobacco,—6047 bushels bran,—2000 bushels *oats*,—5000 oak-staves,—and 3 barrels flour,—a quarter of Indian-corn or wheat taking up a space of 10½ cubic feet, and a quarter of American oats, which weighed on an average 272 lbs., but are not a usual shipment from America, occupying a space of 16 cubic feet:—it was held, that the words "other grain" must be taken to mean such description of grain as would average 480 lbs. to the quarter, and, therefore, did not include *oats;* and that the shipowner was entitled to freight as if 3000 barrels of flour, meal, or naval stores had been shipped; and, for the rest of the space, at the rate of eleven shillings per quarter of Indian-corn or other grain of the average weight of 480 lbs. to the quarter.[3] In another case, a ship was chartered to load a cargo of coals at Cardiff, and therewith proceed to Pernambuco and deliver the same, and there receive a full cargo of sugar and other merchandise, and then sail to a safe port in the United Kingdom, and deliver the same, *on being paid freight at the rate of sixty shillings per ton of twenty-nine cwt. nett for sugar, and for other produce at a rate proportionate thereto:*—the freight payable as follows,—£150 on signing bills of lading at Cardiff,—cash for disbursements abroad at the current rate of exchange,—and the remainder on delivery of the cargo:—the master to sign bills for such cargo *at any rate of freight that may be tendered:*—the owners to have a lien on the homeward cargo *for all freight and demurrage that may accrue* (*arise*) *thereon, to the extent of the bill of lading freight*, but the difference, if any, to be paid at the port of loading, by captain's draft on charterers, at usance (the usual term allowed by law or custom for payment at place of payment), which they were to accept and pay on consignee at loading port agreeing to the amount:—it was held that the meaning was,—if the *bill of lading freight* was less than the *charter freight*, the difference was to be paid at the port

[1] Neill *v.* Ridley, 9 W. H. and G. 677.
[2] Hunter *v.* Fly, 2 B. and A. 421.
[3] Warren *v.* Peabody, 8 M. G. and S. 800.

of loading, by the captain's draft on the charterers, at usance, if the consignee adjusted the amount,—otherwise, at the port of delivery.[1]

If the freight is a gross sum for the entire ship for the whole voyage, this gross sum is payable, though the merchant do not fully load the ship, though he has bound himself to furnish a complete loading of certain enumerated articles, or a specified number of casks or bales, and fails to do so,—he must make good the loss thereby sustained by the shipowner.[2] But where the agreement was to load a full and complete cargo,—the fore-cabin to be filled with light goods,—freight £4, 15s. per ton of 20 cwt. for sugar, coffee, and rice, and for pepper at 18 cwt to the ton;—100 tons of rice or sugar to be shipped previous to any part of the loading, to keep the vessel in proper trim for the voyage:—it was held, that the owner was obliged to furnish what further ballast was necessary, and that the freighter, after furnishing 100 tons sugar, was at liberty to complete the cargo with light goods.[3]

And, where a cargo of guano was put out of a disabled ship into another ship, the *Fairy Queen*, which was chartered "to take on the cargo brought by the *Oriente*, being 470 tons, more or less, not exceeding what she can reasonably stow," at the rate of £5, 2s. 6d. per ton; but the captain said, after the cargo was loaded, that he had not more than 350 tons on board, and, therefore, the captain of the *Oriente* agreed that freight should be paid on the full quantity mentioned in the charter-party; and a bill of lading was accordingly signed by the captain of the *Fairy Queen*, making the cargo deliverable to the agents for the general average contribution of the *Oriente*, or their assigns, he or they paying freight for 470 tons as per charter-party:—it was held, that there was no warranty in the charter-party of the cargo being 470 tons more or less, and that, therefore, the owners of the cargo were not liable by the charter-party for not loading a full cargo.[4] But, where a ship was chartered by a London merchant to bring from Bombay *a full and complete cargo*, at £3, 5s. per ton, and, after his agents at Bombay had loaded in the parts usually appropriated to cargo as much as she could well carry, they sent on board more goods, which could only be stowed, and had to be stowed, in the cabin; and the shipowner claimed freight for these goods at the then current rate of £7 per ton:—it was held, that the charterer was not entitled to load the cabin, and that, for goods so laden, he was bound to pay the current rate of freight at the time of loading.[5]

When a vessel is freighted at so much per month or week of the voyage, the freighter must pay the stipulated rate for the time occupied, beginning from the day the ship breaks ground and commences the voyage,—whatever delays or obstructions may arise from contrary winds, storms, embargo, necessary repairs, or other necessary cause,—not imputable to the owner or captain,—provided the vessel arrive at her port of destination. As where, by the charter-party, the charterers were to pay a certain sum of freight for the first eight months, and so much per ton per month if employed longer;—the vessel was captured while sailing under the orders of a supercargo, and detained five or six weeks, being out altogether thirteen

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[1] Santos *v.* Brice, 6 H. and N. 290.
[2] Pullar *v.* Stainforth, 11 East, 232.
[3] Irving *v.* Clegg, 1 Bing. *n. c.* 53.
[4] Grey *v.* Gibbs, 2 H. and N. 22.
[5] Michelson *v.* Nicol, 7 W. H. and G. 929.

weeks: the freighters were held liable for freight during the time of detention, the same as if it had been occasioned by contrary winds or embargo.[1] And when, by the charter-party, the vessel was freighted for six months certain, at so much per month, and so, in proportion, for any longer time she might be employed,—and the ship was to be kept in repair by the owner; but, before the termination of the voyage for which she was chartered, certain repairs became necessary, which occupied a period of twenty-eight days:—it was held, that the freighter was not entitled to deduct these days, in calculating the period for which he had to pay freight.[2]

If the freight is to be paid on the arrival of the vessel, or on the delivery of the cargo, this must take place before the freight can be demanded. As where, by charter-party between the shipowners and freighters, the vessel was to proceed from London to Naples, and there make a right and true delivery of the outward cargo, *and having done so*, receive on board a return cargo, restraints of princes excepted, and the freighters covenanted to find and provide *a full and complete return cargo* at Naples, and that £1750 should be paid *on delivery of the outward cargo*, as earned for outward freight:—it was held, that, as the outward cargo was seized by the Government at Naples, and was never delivered to the freighters, they were not liable to pay the outward freight of £1750.[3] And, where a vessel was freighted at so much *per ton per month*, for six months at least, and so in proportion for less than a month, or for such further time than the six months as she might be detained in the freighter's service, until her final discharge, or until the day of her being lost, captured, or last heard of;—the freight to be paid the master in the following manner:—so much as might be earned *at the ship's arrival at her first destined port abroad*, to be paid within ten days after arrival, and the remainder at specific periods: it was held, that the provisions of the charter-party constituted an entire contract as to the payment of freight, the first qualification of which was, *her arrival at the first destined port*, upon which the owner's right to recover any freight depended, and the ship having been lost in her outward voyage, the owner was not entitled to recover freight at so much per month to the day of her loss.[4]

And, when a certain rate of freight is made payable *per calendar month*, —a very plain and common-sense rule was adopted by Lord Ellenborough, that "the time *fixed for its actual payment*, can only be considered *as postponing*, for the freighter's convenience, the actual payment of a sum then due to a future period, not as creating a contingency (a chance) whether it should ever be paid at all:—each month's freight, therefore, was earned and became completely due at the end of each month, and it was nothing but the actual payment that was postponed."[5] But the freighter may bind himself, by express stipulation, to pay the freight, without respect to the completion of the voyage; and, therefore, where a freighter agreed, in consideration of the shipowner taking on board his goods for the purpose of conveyance, to pay him, on the delivery of bills of lading, a certain sum on these being so delivered, and the ship was lost,—that sum was held recoverable, at all events, immediately on delivery of the

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[1] Moorsom *v.* Greaves, 2 Camp. 627. [2] Ripley *v.* Scaife, 5 B. and C. 167.
[3] Storer *v.* Gordon, 3 M. and S. 308. [4] Gibbon *v.* Mendez, 2 B. and A. 17.
[5] Havelock *v.* Geddes, 10 East, 555.

goods on board.[1] And where in a charter-party, it was stipulated that £120 were to be paid at the outward port, as the freight of the outward cargo, and as much cash as was necessary for disbursements, and the remainder of such freight to be paid on delivery of the homeward cargo; the vessel arrived at the outward port, and delivered her cargo:—and it was held, that this stipulation imported an absolute payment of freight for the outward voyage, the contingency of completing the voyage being left to affect only the residue.[2] So also, by a charter-party from London to Calcutta and back, on the usual terms, it was also agreed, that the freighter might hire the vessel for an intermediate voyage within certain limits, for not less than six months, in which case, the captain should refit the vessel, keep up the complement of men, and provide all necessaries; and the freighter agreed to pay the owner at the rate of £1 per ton per month on the ship's tonnage, and to pay four months of such hire in advance, and, at the end of the six months, to pay two further months, and so on every succeeding two months, and the balance due at the termination of such hiring, in cash or approved bills; and it was further agreed, that, if the vessel should be lost or captured, freight, by time, should be payable to the period when lost or captured or last heard of:—it was held, that, under the former clauses of this agreement, the freighter could not claim return of any part of the four months' advance, on the vessel being lost within that period, the advance being absolute in respect to the freighter.[3] And, by a charter-party, it was agreed that the ship should load a cargo from the charterer's factors, and proceed therewith to London, and deliver the same on being paid freight at the agreed-on rate, "cash for ship's disbursements to be advanced to the extent of £300 free of interest, but subject to insurance," and "the freight to be paid on unloading and right delivery of the cargo, in cash, less two months' interest at," &c., and, "if required, £300 to be paid in cash on arrival, less two months' interest;" £300 were advanced by the charterer's factors for the ship's disbursements, but no insurance was effected of this £300, and the ship having been lost on the homeward voyage, the charterer claimed payment of the £300 as a loan to the shipowner:—but it was held, that, as appeared from the charter-party, this sum was not a loan, but an advance of freight.[4] But where the memorandum for charter-party stated, one-half of the freight to be paid in cash, on unloading and right delivery, and the remainder by bill at four months, and added—"the captain to be supplied with money for the ship's use;" and the captain drew a bill on the freighters, which was accepted and paid:—it was held, that this was not to be considered as payment of freight in advance, but as a loan to the owner, to be reimbursed by him.[5]

Where it was agreed by charter-party, that the ship should, after discharging her outward cargo at Bombay, take in her homeward cargo, for one-half of which, freight was to be paid at £3 per ton, and, as to the rest, at the current rate of freight when the ship should be loading, and there was a stipulation, that the captain (a part owner) and the agents of the charterer at Bombay, were at liberty to make such alterations in the char-

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[1] Andrew *v.* Moorhouse, 5 Taunt. 435.
[2] De Silvalle *v.* Kendal, 4 M. and S. 37.
[3] Saunders *v.* Drew, 3 B. and Ad. 445.
[4] Hicks *v.* Shield, 7 El. and Bl. 633.
[5] Manfield *v.* Maitland, 4 B. and A. 585.

ter-party as they might mutually think proper, without prejudice to that agreement; soon after her arrival at Bombay, the captain and agents entered into a written agreement (endorsed on the charter-party), that the ship might proceed to Aden with Government coals and stores (her outward cargo), and return to Bombay, without prejudice to the charter-party; she accordingly, in February, sailed to Aden and discharged her cargo, and returned to Bombay, where she arrived in May; and, for this voyage to Aden, the owners received a large sum as freight:—it was held, that the charterer was bound by this alteration, made by his agents permitting the voyage to Aden, which was within the scope of the authority given to them by the charter-party; and, therefore, that he was bound to pay the charter rate of £3 per ton for half the cargo, although that exceeded the current rate of freight at the time of loading, and although the alteration might be prejudicial to his interests, and that he was not entitled to have the freight earned by the owners on the voyage to Aden taken into account.[1]

Although it is the general rule, that freight is payable, only on a right and true delivery of the cargo, yet, if the vessel arrive at her port of destination with these, the whole freight is due, though the goods may have fallen in market price, or have been damaged by the perils of the sea, if the merchant receives them; and, in this latter case, he cannot select part, and reject the rest. And, therefore, although the goods may have been damaged, if they have been received by the merchant, he cannot set off this claim of damages against the claim of freight; but, if the damages have proceeded from a cause for which the master or owners are responsible, he can only recover these by an action at law against them.[2] And, if the vessel be disabled without any fault of the captain or owner, so as to be unable to complete the voyage without repairs, the captain can either refit his own vessel, if that can be done in due and reasonable time, and, for that purpose, may go into a port short of his place of destination,—or, where that cannot be done, he is at liberty to procure another vessel to carry on the goods to their port of delivery; and, in that case, he will be entitled, on the goods arriving, to the whole freight originally contracted for, although, by the second conveyance, the goods may be carried for less than that freight.

For instance, when, in a general ship, goods were shipped, and a bill of lading granted for them, by which the goods were to be delivered to a party named, "or his assigns, he or they paying freight for the said goods as per margin;" but that vessel, having encountered severe gales, was so damaged, that it was found necessary to tranship the cargo, including said goods, to two other ships, the *Mountaineer* and the *Sesostris*, and, on arrival, the party named claimed and obtained his goods, under the original bill of lading, but only offered to pay a proportional freight for that part of the voyage performed by the first ship, and the actual freight to the two other ships:—it was held, that, apart from the question, whether a captain is *bound*, if he has the opportunity, to forward the goods by some other conveyance to the place of destination,—at any rate, he is at liberty to do so by a conveyance equally cheap, if he think fit,—and, if the goods arrive at the place of destination by such other conveyance, he is entitled, on the

[1] Wiggins *v.* Johnstone, 14 M. and W. 659.

[2] Abbot, 328.

freighter obtaining the goods, to the whole freight originally contracted for, though the freighter was named as consignee in the original bill of lading, and the bill of lading for the goods by the second conveyance makes another party consignee, and though the goods are carried by the second conveyance for less than the freight originally contracted for.[1] And, in another case, London merchants had chartered a ship, the *Planter*, to bring a cargo of guano at the freight of seventy shillings per ton, and their agents made a considerable amount of advances to the captain in South America, on account of the freight; but, on the homeward voyage with the guano, the *Planter* became incapable, in consequence of sea-damage, to proceed; and, the agents having declined to interfere as to the transhipment of the guano to another vessel, the captain of the *Planter* chartered, in his own name, the *Alarm* for that purpose, and agreed to pay the same rate of freight as was payable by the original charter-party, and he took a bill of lading from the captain of the *Alarm* to himself as the shipper,—the merchants being named in it as the consignees to whom the guano was to be delivered; but, it was agreed between the captains, that, while the seventy shillings per ton should be the freight required on delivery to the consignee, forty shillings per ton was to be the freight of the *Alarm*, and the difference was to belong to the captain of the *Planter*:—the guano having arrived in the *Alarm*, the merchants acquired delivery of the guano, on their paying the balance between the amount of the original charter-party freight and the advances their agents in South America had made to the captain of the *Planter*, but the full charter-party freight of seventy shillings per ton was insisted for:—it was held—1. That the contract made by the captain of the *Planter*, when he chartered the *Alarm*, must be held as a contract made by him on behalf of his owners, and not of the freighters; and 2. That, if entered into by him as agent of his owners, *they had not a lien* (a preferable claim) over the cargo, which they could convey to the captain of the *Alarm*, so as to entitle him to withhold the guano until the whole of the freight had been paid.[2]

If the voyage is performable in parts, and the freight is also so proportioned, the freight will be due for that part of the voyage which may have been performed, though the other be not performed. As, when the charter-party makes an outward and a homeward voyage two distinct voyages, one of which is performed, freight will be due for it, though the ship be lost on her homeward voyage, and no freight will be due for that homeward voyage. As, by charter-party, a voyage was out and home, and the freighter was to pay £120 of freight for the outward voyage, and at a certain rate for the homeward voyage,—the £120 being to be paid for the freight of the outward cargo, and as much cash as might be necessary for the vessel's disbursements; the vessel arrived at her outward port, where the £120 of outward freight was paid, and also £192 for necessary disbursements; the vessel took in her homeward cargo and sailed for her port of destination, but was lost by capture:—it was held, that the freighter could not recover the money so paid.[3] And, by a charter-party, the ship was to proceed to a foreign port, and there load, and return with her cargo to London, and payments were to be made as follows:—"cash for ship's

[1] Shipton *v.* Thornton, 9 Ad. and El. 314. [2] Matthews *v.* Gibbs, 7 Jur. *n. s.* 180.
[3] De Silvalle *v.* Kendal, 4 M. and S. 37.

disbursements to be advanced to the extent of £300, free of interest," &c., "the freight to be paid on unloading, and right delivery of the cargo:"—at the foreign port, cash was advanced by the charterer's agent, to the captain for the ship's disbursements, and the captain drew a bill on his owners for the sums so advanced; but the ship was lost on her homeward voyage, and the owners refused to accept the bill:—in an action by the charterer for the amount,—it was held, that the advance was in part payment, and not a loan, and, therefore, was not recoverable.[1]

If the freight is made payable,—say, as much as may be earned on the ship's arriving at her first and destined port abroad,—or on delivery of her outward cargo,—but the ship is lost on the outward voyage, or is prohibited from unloading her outward cargo,—no freight will be due. As, when it was agreed by charter-party, that freight was to be paid to the shipowner, at and after the rate of so much per ton per month for six months at least, and so in proportion for less than a month, or for such further time than six months the ship might be in the freighter's service, until her final discharge, or until the day of her being lost, captured, or last seen or heard of,—the freight being payable to the captain, thus:—as much as might be earned at the time of the ship's arrival at her first destined port abroad, and the remainder at certain periods thereafter:—but, the ship having been lost on her outward voyage, and not having, therefore, arrived at her first destined port abroad,—the owner could not recover the monthly freight to the date of the loss.[2] And, when the charter-party provided, that the ship should proceed from London to Naples, and there make a right and true delivery of the outward cargo, and, *having done so*, should receive on board a full and complete return cargo, restraints of princes excepted, and the freighters agreed, at Naples, to find and provide this return cargo, and that £1750 should be paid on delivery of outward cargo, for outward freight:—the outward cargo having been seized by the Government at Naples, and never delivered to the freighters,—an action by the shipowners against the freighters for payment of the £1750, was not sustained.[3] So also, in an insurance case upon a policy on chartered freight,—for a total loss of the freight of 120 tons of the cargo,—the ship was chartered to proceed from the Cape of Good Hope to Hondelkip Bay, and there load a cargo of copper ore, and proceed therewith to Swansea, in England; and, after having loaded part of her cargo, the ship received damages to her capstan in a storm, which disabled her to load the rest of her cargo, 120 tons, there lying ready, until this damage was repaired:—these repairs could have been done at the Cape, 180 miles distant, but instead of going there, the Captain proceeded to St. Helena, 1800 miles distant, where he expected to be able to repair, and intending then to return for the rest of the cargo:—not being able to get repaired at St. Helena, however, the captain came on to Swansea, with the cargo short that 120 tons:—and, in an action for the corresponding loss of freight, it was held that the shipowner could not recover, as the captain was not prevented, by perils of the seas, from procuring repairs and earning the freight.[4]

In regard, then, to the proper time at which freight will be due, and can be legally demanded,—the general rule of law is, that freight is not due

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[1] Hicks *v.* Shield, 3 Jur. *n. s.* 715.
[2] Gibbon *v.* Mendez, 7 B. and A. 17.
[3] Stoiter *v.* Gordon, 3 M. and S. 308.
[4] Philpott *v.* Swann, 7 Jur. *n. s.* 1291.

until the contracted-for voyage is finished, although the parties can, in a charter-party or otherwise, so bargain by a special agreement, as to overrule this general principle, and settle their own times and terms for paying any freight.[1]

III.—DEMURRAGE.

A specified number of days are usually allowed in the charter-party, or bill of lading, for loading and unloading the vessel, and are either running days, including every day, or working days, excluding Sundays and custom-house holidays, or weather-working days; and where the word "days" is used generally, it will be understood to mean, working or running days, according to the usage of the port. These days are termed *the lay-days*, and are to be reckoned from the time of the ship's arrival at the usual place of discharge *in* the port (if no particular place has been fixed), and not *at* the port, although for the purposes of navigation, some part of her cargo may have been discharged at the entrance.[2] If the cargo has to be discharged in a dock, these days will be computed from the period of the ship's arrival in the dock, and not from her coming to the place of unloading;[3] as where a collier reached Gravesend on the 9th, but, in consequence of the factor's certificate that she was a metered vessel, she was detained there by the harbour-master till the 20th, when her turn arrived for her to proceed to the Pool, and discharge her cargo: —it was held, that, under these circumstances, the vessel was not to be considered as having arrived at her place of discharge until the 20th, and that, therefore, the lay-days did not begin to count till then.[4] When it was agreed by a charter-party, that a ship should "proceed with all convenient speed to Coles' Wharf, Rochester, or so near thereto as she might safely get;" and the ship arrived at Rochester on 24th October, and was moored at a place called The Buoys, distant about eight hundred yards from Coles' Wharf, where the captain intimated she was ready to discharge, but the charterer's agent directed him to proceed to Coles' Wharf: —from the then state of the tides and the want of water, the ship could not get to Coles' Wharf until 8th November, as the agent would not send lighters and lighten her, so as she could reach earlier:—it was held, that the charterer was not bound to unload the ship until she reached Coles' Wharf, and that the lay-days did not begin until 4th November.[5] And, when a ship was chartered to receive on board a cargo of coals, and proceed with them to Constantinople, (and or) Odessa, the charter-party had the following clause:—"The vessel to be loaded in Liverpool in fourteen days, and to be discharged (weather permitting) at not less than twenty-five tons per working day (holidays excepted); the days to commence on the ship's being in turn and ready to deliver: all days above the said days to be paid demurrage at the rate of £5 per day:"—it was held, that the words "holidays excepted," did not apply to the fourteen days allowed for loading; and that, though two Sundays occurred in these fourteen days, still there was only the fourteen days within which she was to be loaded.[6]

If a particular place is fixed on for the loading or discharge of the cargo,

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[1] *The John*, 3 W. Rob. Ad. R. 170.
[2] Brereton *v.* Chapman, 7 Bing. 539.
[3] Brown *v.* Johnson, 10 M. and W. 331.
[4] Kell *v.* Anderson, 10 M. and W. 498.
[5] Bastifell *v.* Lloyd, 10 W. R. 721.
[6] Nienann *v.* Moss, 6 Jur. *n. s.* 775.

or if it is provided that, in the event of certain contingencies, the vessel can discharge at two or more places,—in the former, the days run from the ship's arrival at the place fixed on,—and, in the latter, from the place first selected for commencing to load or discharge. Thus, by charter-party, the vessel was to have ninety running days, and ten days of demurrage, to commence from her arrival at Whidah, being ready to unload, and having received *pratique* (liberty to unload),—but the charterer not having unloaded and loaded the vessel within the running days and days of demurrage,—it was held, that the vessel having received *pratique*, was sufficiently borne out by the fact, that she was ready and at liberty to load.[1] Where, also, a vessel was chartered to convey a cargo to Oporto, and, if the river was in possession of an enemy, to unload at Foz, outside the harbour, the freight was to be £475; but, if the vessel could not enter Oporto, and discharge and reload there, £300 only; twenty-five days were allowed for unloading and reloading, to commence when the vessel was off the castle of Foz, or other point where she was to be discharged, and £4 of demurrage for every day over and above the lay-days; the vessel arrived at Foz on 3d June, and, an enemy being in possession of the river, she commenced unloading there, from time to time, as the cargo was sent for by the consignee, and was detained there partly in doing so, and partly by bad weather, until 25th August, when the river was open, and, next day, the vessel entered Oporto, and discharged the remainder of her cargo:—it was held, that the lay-days expired on 28th June.[2] So under a charter-party, coals and iron were to be loaded at Cardiff for Alexandria, the running lay-days to commence on 16th December; but it was subsequently agreed, that the coals should be laden at Pembroke, and the vessel did not sail for Cardiff till the 27th:—it was held, that the running days were still to be reckoned from 16th December[3]. And where a ship was chartered to proceed to a dock, and there take and load in the customary manner, from the charterer's agent, a full and complete cargo of coals of a particular colliery, *to be loaded in regular turn*,—and it having been found as a fact, that this meant the "turn" on which the vessel should arrive and be ready to receive cargo,—not merely the "turn" according to the known and established custom of the colliery:—it was held that the charterer was liable for demurrage, during a delay by the ship's not being able to get her cargo taken on board, when ready to receive it, nor in the order in which, according to the custom of the colliery, she was allowed to be loaded.[4]

When the number of lay-days is fixed for loading or discharging, that number will be strictly adhered to and enforced, whether the merchant be to blame or not; unless in the case of a general ship, in which the rule now seems to be, that the lay-days only run from the time that the particular goods are ready to be discharged. But where the cargo is to be loaded or discharged within the usual and customary time, or within a reasonable time after arrival, or where no time is mentioned, a liberal construction is given to the charter-party, so as to give effect, as far as possible, to the true and evident intention of the parties.[5]

Usually, there is a certain number of days fixed, after the expiry of the

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[1] Bailey *v.* De la Arroyave, 7 Ad. and El. 919. [2] Gibbons *v.* Buisson, 1 Bing. *n. c.* 283.
[3] Jackson *v.* Galloway, 5 Bing. *n. c.* 71. [4] Lawson *v.* Burness, 2 F. and F. 793.
[5] Abbot, 222, 227.

lay-days, during which the freighter or consignee can detain the vessel, on paying so much per day for that additional time; and these days are called *demurrage days*, and the sum payable is also called *demurrage*, or the agreed-on compensation to the owner for the additional delay or detention, and it is an express stipulation, that the vessel shall, in no event, be detained longer, and if detained longer, the charterer or freighter will be liable in damages.

When lay-days are fixed, the expiry of these days is the commencement of the demurrage days, although the freighter or consignee be not in fault, or although the delay be inevitable. As, where two vessels were freighted under an agreement to wait twenty days for convoy, and £6 were to be paid for the one, and £7 for the other, per day, for every day beyond the twenty; the vessels arrived at the convoy ports, and remained one hundred and forty-eight days, detained partly by the convoy, and partly by tempestuous weather:—it was held, that the owners were entitled to demurrage, both during the time they waited for the arrival of the convoy, and while the convoy was not ready to sail, but, that no demurrage was chargeable while they were detained by the weather.[1]

The owner will also be entitled to demurrage where the delay is owing to the improper acting or interference of the customs-officers;[2] or where there is a stipulated number of days for unloading, and the vessel has to be discharged in dock, but, on account of the crowded state of the dock, she cannot be discharged in that time.[3] And, where thirty running days were allowed for loading and discharging, and ten days on demurrage, at £4 per day; but the ship was detained thirty-two days in loading beyond the thirty lay-days, a severe frost of some weeks having prevented the complete loading till 25th February; and the custom-house being then burnt down, no clearances could be obtained till 9th March:—it was held, that the owner was entitled to demurrage from 7th February, when the thirty running days expired, but not after the 25th, when the loading was completed.[4] And the freighter will be liable in demurrage, though the cargo could not be sent alongside at the foreign port, in consequence of a pestilential disorder being prevalent at that port, on account of which all public intercourse was prohibited by law.[5]

Where, in consequence of the freighter's delay in furnishing the cargo, the vessel was detained from 1st September to 28th October, when, the lading being completed, she sailed, but, by adverse winds and frost, *was driven back and frozen up until 11th May*,—it was held, that the freighter was liable for the freight, and a compensation in the nature of demurrage, from 1st September to 29th October,—it being proved, that, by mercantile usage, demurrage ceased when the ship is clear and ready for sea.[6] And where the ship is unavoidably detained by frost, *after the completion of the loading*, the charterer is not liable in demurrage to the owner for such detention.[7] But when a ship was to be loaded with a full and complete cargo of coals, to be loaded with usual despatch, and to proceed to Dublin (the act of God, &c., excepted, during the voyage), and twenty tons to be allowed per working day for discharging, or, if longer detained, to be paid forty

[1] Lannoy *v.* Werry, 2 Brown's P. C. 60.
[2] Bessy *v.* Evans, 4 Camp. 131.
[3] Randall *v.* Lynch, 12 East, 179.
[4] Barret *v.* Dutton, 4 Camp. 333.
[5] Barker *v.* Hodgson, 3 M. and S. 267.
[6] Jamieson *v.* Lawrie, 6 Bro. P. C. 472.
[7] Pringle *v.* Mollet, 6 M. and W. 802.

shillings per day demurrage. The vessel was loading in the Nelson Dock on a canal, by which coals were brought from the colliery in "flatts," alongside the loading ship, and, if loaded "with usual despatch," at the rate of twenty tons a day, it would have taken five days and a half; but, in consequence of a sudden frost, the loading of the ship with coals thus brought was delayed for thirty-four days:—it was held, that the words "usual despatch" meant "despatch of persons who have a cargo ready for loading," and that, therefore, the freighter was responsible for the delay.[1]

If the charter-party stipulates merely the usual and customary time for loading or unloading, or if no time be stipulated, then an implied promise is raised by law, that the ship shall be loaded and discharged in the usual and customary manner; and, if the goods require to be discharged into a Queen's warehouse, or, from the crowded state of the docks, the vessel cannot obtain a berth to discharge;—in the one case, the usual and customary time only commences when the vessel can get a berth by rotation, and the cargo be discharged into the warehouse, although great part of the delay may be owing to the charterer's warehousing;[2] and, in the other case, forty days were stipulated for unloading the outward cargo, and loading and unloading a homeward cargo, and the vessel arrived in the London Docks on the 10th, and these forty days expired on the 22d August; but, owing to the crowded state of the docks, her discharge was not finally completed till 6th October, thirty-one days after expiry of the ten days which she might be kept on demurrage at £5 per day: and it was held, that the freighter was as much liable for the delay arising from the want of a berth, as if it had arisen from tempestuous weather, or any other cause.[3] And where there is no condition on this subject in the bill of lading, the same holds in the case of a general ship.[4]

The same rules equally apply to the case of a general ship as to one under special freight; and the owners of goods will be liable in demurrage if the goods are not taken out within the lay-days; but, if the goods are not ready for discharge, the owner must have a reasonable time for removing them after they are so, and he will not be liable for demurrage till the elapse of such a reasonable time.[5]

It will not relieve the consignee from liability for demurrage (if stated in the bill of lading), that he received no notice of the ship's arrival, although, for want of this notice, he had failed in discharging the ship in due time;[6] or that he did not receive the bill of lading in time, and the captain insisted on its being produced or on receiving an indemnity;[7] or, when the vessel was ready, on 5th September, to discharge her cargo, which might have been done in five days, and the lay-days ended on the 13th; but the shipper's agent gave the captain notice not to part with the cargo without production of the bill of lading, which was not produced till the 22d, and the delivery was finished on the 30th:—it was held, that the charterers were liable for demurrage and detention.[8] But if the delay has been occasioned by the captain's inability to procure the necessary clearances after the vessel is laden—it being the captain's duty to obtain

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1 Kearon *v.* Pearson, 7 H. and N. 386.
2 Rogers *v.* Forrester, 2 Camp. 483.
3 Randall *v.* Lynch, 12 East, 179.
4 Burmaster *v.* Hodgson, 2 Camp. 488.
5 Rogers *v.* Hunter, 2 C. and P. 601.
6 Harman *v.* Clarke, 4 Camp. 159.
7 Jesson *v.* Solly, 4 Taunt. 52.
8 Erikson *v.* Barkworth, 3 H. and N. 894.

these;[1] or by the refusal of the owner to allow the ship to be unloaded,[2] —the consignee is not liable in demurrage.

The consignee or endorsee, or whoever accepts the goods under the bill of lading, is liable for demurrage when that word is in the bill of lading, and demurrage is due; and such party is equally liable, whether the goods have been shipped under a charter-party or a bill of lading only.[3] But, although the bills of lading make the freight payable to the captain, he cannot maintain an action against the consignee to pay demurrage, when the bill of lading contains no such condition,[4] although this may be easily obviated by inserting in the bill of lading after the words "he or they paying freight," the words "and demurrage if incurred," as, without such words, a consignee is not liable for demurrage.[5]

If the vessel be detained beyond the demurrage-days, the owner is entitled to prove the extent of the damage sustained; although generally the stipulated demurrage will be the measure of the compensation.[6]

As a necessary precaution, the captain ought, on the expiration of the lay-days, to protest against the shippers or consignees,—or, if no lay-days have been fixed, the same protest ought to be taken at the expiry of the usual and customary time for loading or discharging; and a similar protest ought to be taken at the expiry of the demurrage-days.

IV.—LIEN FOR FREIGHT.

In security for the payment of freight, the shipowner and shipmaster have a *lien*,—a right of holding and retaining the goods or cargo shipped on board his ship, until the hire or freight payable in respect of these goods or of that cargo has been paid or settled for, in terms of the original bargain,—whether that has been by charter-party or only by bill of lading, and when that bargain is not inconsistent with the exercise of this right. It extends over the charterer's goods for the amount of the chartered freight, and also over the goods of such freighters from him, to the effect of recovering the whole freight due to the shipowner.[7] And this right extends over every part of the cargo or goods belonging to any person, for the freight of the whole consigned to that person;[8] and can be exercised over goods or cargo, though the bill of lading is in the hands of an endorsee for value, and bears that the freight was to be paid by the shippers "one month after sailing, lost or not lost," but which the captain is advised by his owner the shippers have failed in paying.[9] And by the Bills of Lading Act (18 and 19 Vict., cap. 111) it is enacted, section 1, that "every consignee of goods named in a bill of lading, and every endorsee of a bill of lading to whom the property in the goods therein mentioned shall pass, upon or by reason of such consignment or endorsement, shall have transferred to and vested in him all rights of suit (action), *and be subject to* (*placed under*) *the same liabilities in respect of such goods*, as if the contract contained in the bill of lading had been made with himself."

When goods or cargo had to be delivered in a dock, or to a wharfinger

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1 Barrett *v.* Dutton, 4 Camp. 333.
2 Benson *v.* Blunt, 1 Gale and D. 449.
3 Randall *v.* Lynch, *ut sup.*
4 Evans *v.* Forster, 3 B. and Ad. 118.
5 Chappell *v.* Comfort, 10 Scott, *n. s.* 102.
6 Moorsom *v.* Bell, 2 Camp. 616.
7 Kerr *v.* Deslandes, 8 Jur. *n. s.* 194.
8 Perez *v.* Alsop, 3 F. and F. 188.
9 Nairs *v.* Graham, 8 El. and Bl. 505.

or warehouse-keeper, or into a Queen's warehouse, it was necessary to give due intimation that these were so delivered, under express reservation of the shipowner's lien for the freight, if that had not been made payable so as to exclude this lien; as, if the freight was to be paid "on loading and right delivery of the cargo in cash, two months after the ship's inward report at the custom-house:"—it was held, that the freight was not payable until two months after the inward report; and that, after the cargo was discharged in terms of the charter-party, the shipowner had not any lien thereon for the freight.[1] Or, the shipowner or shipmaster could enter the goods in his own name, and land them in security of freight, duties, and charges.

But by section 67 of the Merchant Shipping Acts Amendment Act, 1862, it is enacted, that where the owner[2] of any goods[3] imported in any ship from foreign parts in the United Kingdom,—fails to make entry[4] thereof, —or, having made this entry, fails to land these goods, or take delivery, of the same, and to go on doing so with all convenient speed, by (at) the several respective times after mentioned,—the shipowner[5] may make entry of, and land or unship the said goods at the times, in the manner, and under the conditions following:—

1. If *a time* for the delivery of the goods is stated in the charter-party, bill of lading, or agreement, then at any time *after* the time so stated.

2. If *no time* for delivery of the cargo is stated in the charter-party, &c.,—then at any time *after* the expiration of seventy-two hours (three days), exclusive of a Sunday or holiday, after the report[6] is made of the ship.

3. If any wharf[7] or warehouse[7] is named in the charter-party, &c., as the wharf or warehouse where the goods are to be placed, and if they can there be conveniently received; on landing them under this section, the shipowner must cause them to be placed on that wharf, or in that warehouse.

4. In other cases, in landing goods under this section, the shipowner must place them on or in some wharf or warehouse, on or in which goods of a like nature are usually placed,—such wharf or warehouse being, if the goods are dutiable, duly approved by the Commissioners of Customs for landing dutiable goods.

5. If at any time before the goods are landed or unshipped, the owner of the goods is ready, and offers to land or take delivery of these goods, he must be allowed to do so; and in such cases, his entry is to be preferred to any entry made by the shipowner.

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[1] Alsagar *v.* St. Katherine's Dock Co., 14 M. and W. 794.

[2] The expression "owner of goods" includes every person who, for the time being, is entitled, either as owner or agent for the owner, to the possession of the goods subject in the case of a lien, if any, to such lien.—*Sec.* 66.

[3] The word "goods" includes every description of wares and merchandise.—*Sec.* 66.

[4] The word "entry" means the entry required by the customs laws to be made for the landing or discharge of goods from an importing ship.—*Sec.* 66.

[5] The word "shipowner" includes the master of the ship, and every other person authorised to act as agent of the owner, or entitled to recover the freight, demurrage, or other charges payable in respect of such ship.—*Sec.* 66.

[6] The word "report" means the report required by the customs laws to be made by the master of an importing ship.—*Sec.* 66.

[7] The word "wharf" includes all wharves, quays, docks, and premises, in or upon which any goods, when landed from ships, may lawfully be placed; and the word "warehouse" includes all warehouses, buildings, and premises, in which goods, when landed from ships, may lawfully be placed.—*Sec.* 66.

6. If, for the purpose of convenience in assorting (arranging) them, the goods are landed at the wharf where the ship is discharged, and, at the time of landing, the owner of the goods has made entry, and is ready and offers to take delivery of these, and to convey them to some other wharf or warehouse,—these goods must be assorted at landing, and, if required, are to be delivered to their owner within twenty-four hours after being thus assorted,—the expense of, and following on, the landing and assorting being borne by the shipowner.

7. If, at any time *before* landing or unshipping the goods, their owner has made entry for their landing and warehousing at any particular wharf or warehouse, other than that at which the ship is discharging, and he has offered, and has been ready, to take delivery thereof,—but the shipowner has failed to make delivery, and to give the owner, at that time, correct information when these goods can be delivered,—then, before landing or unshipping the goods as before empowered,—the shipowner must give to the owner of the goods, or of the wharf or warehouse, twenty-four hours' *notice in writing* of his readiness to deliver the goods; and if he lands or unships them without this notice, he does so at his own risk and expense.[1]

When goods are landed from a ship, and are placed in the custody of a wharf or warehouse owner,[2] to, and at that time, the shipowner gives the wharf or warehouse owner *notice in writing* that the goods are to remain (continue) subject to the lien for freight or other charges payable to the shipowner, to an amount to be stated in the notice,—the goods so landed continue liable, in the hands of the wharf or warehouse owner, to the same lien (if any) for the same charges (expenses) as they were subject to before the landing; and the wharf or warehouse owner receiving these goods must retain (keep possession of) them until the lien is discharged (removed), as now to be mentioned,—and, if he fail to do this, he must make good to the shipowner the loss thereby occasioned to him.[3]

But, on the producing to the wharf or warehouse owner of a receipt for the amount claimed as due, and giving him a copy of it, or of a release (discharge and acquittance) of freight from the shipowner, the lien is thereby discharged,[4] or the owner of the goods may deposit (lodge in trust) with the wharf or warehouse owner a sum of money, equal in amount to the sum claimed by the shipowner,—and upon this being done, the lien is discharged; but this is without prejudice (injury) to any remedy the shipowner may have for recovering the freight.[5] And if this deposit is so made, and, within fifteen days after making it, the person depositing does not give *notice in writing* to the wharf or warehouse owner to retain it,—stating in the notice the sum (if any) admitted to be payable to the shipowner,—or if he does not admit any sum to be payable,—the wharf or warehouse owner may pay over, at the end of said fifteen days, the sum so deposited to the shipowner, and, by such payment, he is discharged from all liability in respect thereof.[6] On the wharf or warehouse owner receiving such notice in writing as aforesaid, he must immediately inform the shipowner of that notice,—and out of the sum deposited, he must pay or tender to him the sum, if any, admitted by the

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[1] Sec. 67 of 25 and 26 Vict., cap. 63.

[2] The expression "wharf owner" means the occupier of any wharf, as before described; and the expression "warehouse owner" means the occupier of any warehouse as before described.—*Sec.* 66. [3] Sec. 68. [4] Sec. 69. [5] Sec. 70. [6] Sec. 71.

notice to be payable, and retain the balance, or, if the sum is admitted, the whole of the deposited sum, for thirty days; and, unless legal proceedings have been raised by the shipowner against the owner of the goods, concerning the freight and other charges as aforesaid, and notice in writing of these proceedings has been served on him,—at the end of these thirty days, the wharf or warehouse owner pays over the balance or sum to the owner of the goods, and, by that payment, he is discharged from all liability in respect therefor.[1]

But if this lien is not discharged, and no deposit made as above, the wharf or warehouse owner may, and if he is required by the shipowner, he *must*, sell by public auction, either for home use or exportation, at the end of ninety days from their being placed in his custody,—or, if the goods are of a perishable nature, at such earlier time as he thinks fit,—the said goods, or as much of these as may be necessary to defray the after-mentioned charges.[2] And *before* thus selling by public auction, the wharf or warehouse owner must give notice of the sale by advertisement in two newspapers circulating in the neighbourhood, or in one daily London newspaper, and in one local newspaper, and, also, if the address of the owner is in the ship's manifest, or in any of the documents in his possession, or *is otherwise known to him*,—then he must give notice of the sale to the owner of the goods by post-letter; but the right of a fair and honest purchaser is not affected by this notice having been omitted to be sent, nor is he bound to inquire whether it has been sent.[3]

The wharf or warehouse owner has to apply the moneys received from a sale as aforesaid in the following order:—

1. If the goods are sold for *home use*, in payment of any custom or excise duties owing.

2. In payment of the expenses of sale.

3. If there has been no agreement between the wharf or warehouse owner and the shipowner, as to the order of paying their respective charges,—in payment of the rent, rates, and other charges due to the wharf or warehouse owner for said goods.

4. In payment of the sum claimed by the shipowner as due for freight or other charges on said goods.

5. But should there be an agreement, as referred to in Art. 3, then their respective charges are paid in terms of that agreement; and any surplus is paid to the owner of the goods.[4]

When goods are placed, under authority of the Act, in the custody of a wharf or warehouse owner, he is entitled to rent therefor, and he has also power, from time to time, and at the expense of the owner of the goods, to do all acts in his judgment reasonable and necessary for the proper custody and preservation of these goods, and he has a lien on these for said rent and expenses.[5]

But nothing in this Merchant Shipping Acts Amendment Act compels a wharf or warehouse owner to take charge of any goods, of which he would not be liable to take charge had that Act not passed; nor is he bound to see to the justness of any lien claimed by a shipowner under the Act;[6] nor does the Act take away any powers of any local Act, enabling any harbour trust, body corporate, or persons to facilitate the discharge of ships, or the

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[1] Sec. 72. [2] Sec. 73. [3] Sec. 74. [4] Sec. 75. [5] Sec. 76. [6] Sec. 77.

landing or delivery of goods; nor does it take away or diminish any rights or remedies given by any local Act to any shipowner or wharf or warehouse owner.[1]

These enactments apply to the United Kingdom; but like difficulties may occur at other than a home port. In such a case, though the captain is, no doubt, bound to allow the consignee to satisfy himself with the state of the cargo, yet, when the cargo is to be delivered only on the consignee or his assigns paying freight, *i.e.*, making immediate payment of the freight, according as the cargo is delivered, he need not, strictly speaking, part with the possession of a pound's weight of it, unless upon payment in hand of the freight for that pound's weight. And should any demur be made as to taking delivery of the cargo, he ought, during the running of the lay-days, to intimate in writing, to the consignee named in *his* bill of lading (of whom alone, in this respect, he is cognisant), that, unless full delivery be taken by the expiry of the lay-days, or of the demurrage-days (if any have been allowed), he will then make the requisite entry of the goods or cargo in his own name, and land them or it at or in a specified place, so as to apply to the proper authority for warrant to sell as much thereof as will pay the duties (if any), freight, and charges, and the expense of landing and sale.

But this lien, when not excluded by the agreed-on terms of payment, is a security for the freight only, and does not extend to cover the port charges, which, or a portion of which, the freighter may have contracted to pay;[2] nor the shipowner's claim for demurrage or for dead freight,—which last term denotes the compensation to be paid by the freighter of a *whole ship* at so much freight of the ship's burden or of the cargo, and fails to put on board a cargo to the extent of the ship's tonnage.[3] And, most frequently, this right of lien is excluded by the contract of parties making the freight payable at a certain time *after* delivery, or by bills to be granted for the freight and payable at a future day, but, in this latter case, the captain can retain the goods or cargo until the bills are delivered.[4] On this point, the rule is, that, though the shipowner has a lien upon the cargo for his freight,—that is, for his hire of the carriage, conveyance, and delivery of the goods or cargo,—yet, this lien is held to be renounced by his entering into a contract inconsistent with the exercise of his lien,—as when it has been agreed that the freight is to be paid after delivery of the cargo, and not at the time of delivery.[5]

In this case, the bill of lading bore "Freight for the said goods to be paid *by the shippers*," and on the margin were written the words—"Freight payable one month after sailing, lost or not lost:"—when the ship arrived at her destination, the shipowner claimed a lien on the goods for the freight, and refused to deliver the goods to the consignees until the freight was paid;—but it was held, that the shipowner had no lien on the goods consigned, as the sum claimed was not freight properly so called, and that he was shut out by the contract of affreightment from claiming freight, as, by it, a payment was to be made in the stead of freight, and to be made at a fixed period, having no reference to the delivery of the goods. In a

[1] Sec. 78.
[2] Faith *v.* East India Co., 4 B. and A. 630.
[3] Birley *v.* Gladstone, 3 M. and S. 265.
[4] Saville *v.* Campion, 2 B. and A. 503; Christie *v.* Lewis, 2 B. and B. 410.
[5] Walker *v.* Kirchener, 11 Moore, P. C. C. 21.

nearly similar case, the bill of lading made the goods deliverable to the shippers or assigns, "he or they paying freight for the said goods here, as per margin," and, on the margin, the freight was made payable to a third party, "one month after sailing, lost or not lost:"—this bill of lading was endorsed for value, and, on the ship's arrival at her port of discharge, the captain, having been advised by his owner that the claim had not been so paid, claimed a lien on the goods for the unpaid freight, and refused to deliver the goods to the onerous endorsee of the bill of lading, unless the freight was paid:—it was held, that the amount to be paid by the shippers, at the shipping port, one month after sailing, did not acquire the legal name of freight, and that the shipowner had no right of lien on the goods by that sum being unpaid.[1]

So also there is no place for this lien when the freight is made payable by bills to become due at a date subsequent to the delivery of the goods or cargo. As, when the charter-party stipulated that the ship was to discharge in any dock the freighters might appoint, and deliver cargo "on being paid freight at the rate of £4 per ton;" and, by a subsequent clause, the freight was to be paid "on unloading and right delivery of the cargo, in cash, two months after the vessel's inward report at the custom-house:"—it was held, that, upon the construction of these stipulations taken together, the freight was not payable until two months after the inward report, and the owner had not, after the cargo was discharged pursuant to the charter-party, any lien for the freight.[2] And when a ship was chartered from Liverpool to Calcutta and home, for a gross sum, of which a certain portion was to be paid on the ship's clearing from Liverpool, and another portion on delivery of the outward cargo at Calcutta, "and the remainder in cash, two months after the vessel's report inwards, and after right delivery of the cargo:"—the captain to sign bills of lading at any rate of freight required, without prejudice to this charter-party, and the shipowners to have an absolute lien on the cargo for all freight, dead-freight, and demurrages:—at Calcutta, the charterer's agent shipped a quantity of linseed, for which the captain signed bills of lading deliverable to their order or assigns on payment of freight at 8s. per ton, the then current rate being £5, 10s., and the agents, against this shipment, drew a bill, which they endorsed and delivered, with the bill of lading, for value:—it was held, that the onerous endorsee of the bill of lading, without notice of the charter-party, was entitled to the linseed on payment of the bill of lading freight, and that *the charter-party created no lien* for that part of the freight payable two months from the vessel's report inwards.[3]

V.—PARTIES LIABLE TO PAY FREIGHT.

In the bill of lading the captain usually engages to deliver the specified goods, or the cargo, to the person named or indicated, or his assigns, "he or they paying freight for the same as per margin," or, "as per charter-party;" but, as this is merely the captain's own statement of the *condition* upon which delivery is to be made to the holder of *his* bill of lading, it imports no obligation and no undertaking by the holder to *pay* that

[1] Kirchener *v.* Venus, 5 Jur. *n. s.* 395.
[2] Alsager *v.* St. Katherine's Dock Co., 14 M. and W. 794.
[3] Foster *v.* Colley, 3 H. and N. 705.

freight. It has been held, that the liability of the endorsee or consignee (other than the shipper or charterer) for the freight, arises not from the original contract of affreightment, but *from a new contract* (between the shipowner or the shipmaster and the person about to receive delivery) as to the payment of the freight, the moving consideration of which is the delivery of the goods.[1] By a previous decision, a ship was chartered for a voyage out and home for a certain time, and at a certain rate of payment on the homeward voyage, in full for the hire of the ship for that time, to be paid in part by an advance on the ship's clearing for the outward voyage, and the rest on her return, by bills at a future day; and on the loading of the homeward cargo, a bill of lading was signed to deliver the goods *to the charterer or assigns*, he or they paying freight for said goods *as per charter-party*:—it was held, that the endorsees of the bill of lading for value were not liable *to the shipowner* upon an implied promise to pay freight, arising out of the receipt of the goods under the bill of lading.[2] In another case, a quantity of coals were shipped for London, and the captain signed a bill of lading, by which the coals were deliverable "to N. T., for the London Gas Co., or to his assigns, he or they paying freight for said goods in case of true delivery:"—on the arrival of the vessel, N. T. produced the bill of lading, and received the goods under it, and afterwards offered to pay the freight by bill at two months;—but in an action against him for the freight, it was held, that he was not *personally* liable, because on the face of the bill of lading, he was a mere agent to receive the goods of the company, whose property they were.[3] And in another case, goods were shipped at Bombay, on board a Liverpool ship, and were, by the bill of lading, to be delivered unto order, and to his or their assigns, on paying freight for the same; and the bill of lading was endorsed by the shipper to his East Indian agents in London, who endorsed it in blank to C. & Co., their factors in Liverpool; and on the arrival of the ship, they presented the bill of lading to the shipowner and received the goods,—*the shipowner debiting C. & Co. with the freight*; but C. & Co. afterwards became bankrupt, without having paid the freight, and the agents then claimed from them and took possession of the goods:—in an action by the shipowner against these agents for the freight, it was held that they were not liable for the unpaid freight.[4] As stated by Baron Parke in the case immediately before cited, "the proposition is established that the receipt of goods by the endorsee of a bill of lading, by which they were made deliverable to the consignee or his assigns, he or they paying freight, was evidence of a new contract between him (the endorsee and consignee) and the shipowner to pay the freight according to the terms of the bill of lading; but here" (in that case) "the party receiving delivery is on the face of the bill of lading a mere agent to receive the goods of the company, whose property they were, and the promise to be inferred (drawn) from the receipt of the goods under such a bill of lading, is at first sight a promise by him *as agent* for the company, to pay the freight on their account, and not a promise to be personally responsible." However, as Lord Tenterden, C.J., observed in one case,[5]—"If a person receives goods in pursuance of a bill of lading, in which it is expressed that the goods

[1] Kemp *v.* Clark, 12 Ad. and El. *n. s.* 647. [2] Moorsom *v.* Kymer, 2 M. and S. 303.
[3] Amos *v.* Temperley, 8 M. and W. 798. [4] Tobin *v.* Crawford, 9 M. and W. 716.
[5] Scaife *v.* Tobin, 3 B. and Ad. 528.

are to be delivered to him, he paying freight,—he, by implication,"—*i.e.*, by a necessary deduction,—"engages to pay freight;" and as Baron Parke said in another case,—"The consignee is, at first sight, the owner of the goods,—but if he be not, he is not liable simply as consignee, except on a new contract to pay freight. That is evinced in ordinary cases by the bill of lading, and the same evidence may be deduced from the previous dealings between the parties. If the goods have always been delivered on payment of freight by the consignee, that is reasonable evidence that, in the particular case, he agreed to pay the shipowner."[1] It has accordingly been held, that where delivery has been made to brokers, under an endorsed bill of lading to them, in security of advances they had made to the consignees, and these brokers had been in the practice of thus receiving goods and paying freight, there was in this case an implied promise to pay freight.[2] And as C.-J. Tindal has observed:—"It is by no means a matter of course, that credit should be given for freight under bills of lading, *which make the goods deliverable on paying freight;* and it is plain, *where such credit is given, it is on the responsibility of the individuals actually receiving the goods, or in consequence of the actual course of dealing between them and the shipowner.*"[3]

The following case may be taken as a good example as to the obligations which the law laid upon an endorsee for value of a bill of lading, which made the goods deliverable to the charterer or his assigns, he or they paying freight as per charter-party:—By charter-party between a merchant and a shipowner, it was agreed that the latter's ship should go to India, and there load a cargo from the charterer's agent, and proceed therewith to London, and deliver the same on being paid freight at a specified rate,—half in cash, and half by bills:—the vessel shipped goods at India from the charter's agent, which, by the bills of lading, were to be delivered to the charterer or his assigns, *he or they paying freight as per charter-party, and primage:*"—before the ship arrived in London, the charterer sold part of the goods to a third party, and endorsed to him the corresponding bills of lading; and, when the ship arrived in London, the third party entered in his own name at the custom-house the goods sold, and also at the docks, and paid the duties; and he obtained possession of the goods under the bills of lading and endorsements:—in an action against this third party, the purchaser, for the freight of these goods, it was held—that whether or not these facts were evidence of a contract by the purchaser with the shipowner to pay freight for the goods sold, the court could not, from the facts, assume (take for granted) there was such a contract;—that assuming the facts to be evidence of such a contract, such contract would not support the action;—and that if the bills of lading had not referred to the charter-party, but had merely stated that the goods were to be delivered to the consignee or his assigns, on their paying freight, the taking of the goods under the endorsement would have been evidence from which a contract between the purchaser and the shipowner might have been inferred to pay freight; but that, even in such a case, no such a contract would arise by implication (inference) of law.[4] But it was afterwards held, that when the endorsee of a bill of lading, or the consignee,

[1] Coleman *v.* Lambert, 5 M. and W. 505. [2] Wilson *v.* Kymer, 1 M. and S. 157.
[3] *Per* Tindal, C.J., in Tobin *v.* Crawford, *ut sup.*
[4] Sanders *v.* Vanzeller, 4 Ad. and El. 260.

other than the original charterer, becomes liable for freight, his liability arises, *not from the original contract of freightment, but from a new contract, the consideration (the moving cause) for which is the delivery of the goods.*[1] And if, by the charter-party or bill of lading, the payment of freight and the delivery of the cargo are to take place at the same time,—and part of the cargo has been delivered, but the freight of that part is not paid,—the captain may refuse to deliver the remaining part, unless the freight for it is paid.[2] In this case, it was said by Lord Campbell, C.J. :—"The shipmaster and the endorsees of the bill of lading were strangers to each other until the latter became consignees by the bill of lading, and produced the bill of lading to the shipmaster, and demanded the cargo under it :—a new contract is implied,—not upon the actual delivery of the goods,—but, at the time when the consignee presents the bill of lading to the captain and asks for the goods, and the captain says,—'I will deliver the goods to you upon the terms stated in the bill of lading;'—from that time, the consignee is liable to the captain for freight, according to the bill of lading; and if the bill of lading refers to the charter-party, *he is liable as the charterer would have been.*" "*By presenting the bill of lading, which referred to the charter-party, and taking the goods under it, they entered into a contract to accept the goods and pay freight, as the charterer would have been bound to do.*" And Erle, J., said :—"The consignee, claiming a cargo under a bill of lading which refers to and imports the stipulations in the charter-party, undertakes to do that which the charterer had contracted to do. The bill of lading comprises (includes) a stipulation that freight was to be paid for the goods as per charter-party. It is agreed that *the charterer* would have been bound to pay the freight simultaneously with (at the same time as) the delivery of the cargo; and the consignees have adopted these terms upon the captain agreeing to deliver the cargo to them. Here, the captain, having parted with his lien over part of the cargo by delivery of it, required the consignees to pay freight before a second delivery, and, I think, the consignees had engaged to do so, *because the contract to receive the cargo means simultaneously with payment of freight.*"

And in a case years preceding, Lord Tenterden said :—"It is not the mere receipt of goods by a person who is not the owner of them, with the knowledge that they are subject to a charge (for freight), that will bind him to pay it; but, if such a person receive the goods in pursuance (consequence) of a bill of lading, in which it is expressed *that the goods are to be delivered to him, he paying freight*, he, by implication (by necessary inference), engages to pay freight."[3] Now, however, all question as to the liability of an endorsee or consignee for the freight of the cargo or goods specified in his bill of lading, is put at rest by the Bills of Lading Act, 18 and 19 Vict., cap. 111 (August 1855), which enacted, section 1, that "every consignee of goods named in a bill of lading, and every endorsee of a bill of lading, to whom the property in the goods therein mentioned shall pass, upon or by reason of such consignment or endorsement, shall have transferred to or vested in him all rights of suit (action), and *be subject to the same liabilities in respect of such goods, as if the contract contained in the bill of lading had been made with himself.*"

[1] Kemp *v.* Clark, 12 Ad. and El. *n. s.* 647. [2] Moller *v.* Young, 1 Jur. *n. s.* 234.
[3] *Per* Lord Tenterden, in Scaife *v.* Tobin, 3 B. and Ad. 525.

Thus, the consignee and endorsee of goods and bill of lading can exercise the same rights, and is liable to the same obligations, by his adopting the consignment and endorsement, as the original consigner and party named in the bill of lading would himself have been entitled to exercise, or would have been liable to, had the consignment and endorsement not been made; and, consequently, the consignee and endorsee will be liable for the freight of the goods consigned to and received by him under such an endorsement. As, when the charterer, shipper, and owner of the goods shipped, handed to his agents (who knew of the charter-party) a bill of lading of the goods, *at a rate of freight below that of the charter-party*,—it was held, that the shipowner had a lien on the charterer's goods for the charter-party freight, and that these agents were liable for the charter-party freight to the shipowner, whose lien attaches as against them.[1] But when, by a charter-party between a shipowner and a merchant, H., a ship was to proceed to Madras, and there load a cargo from the agents of H., and being so loaded, to proceed therewith to London, and deliver the same, on being paid freight at the rate of £3, 15s. per ton, and *the captain to sign bills of lading for his cargo at any required rate of freight*,—without prejudice to this charter-party, S. (who acted as H.'s agent at Madras in respect thereof), by H.'s directions, purchased and shipped sugars, and the captain, at the request of S., signed a bill of lading, *by which the sugars were made deliverable to the order of S.*, at the freight of £1 per ton;—the sugars arrived in London; but H. had stopped payment, and did not pay for the sugars:—it was held that S., or those representing him in London, were entitled to the sugars, on payment of the bill of lading freight.[2]

In this instance, when the captain knew that his ship was to be loaded for the charterers, and that S. was merely the charterer's agent at Madras in thus loading his ship, he did very wrong in signing a bill of lading making any part of that cargo,—which was shipped by that agent, *as agent of the charterer*,—deliverable to the order,—not of the charterer,—but of that person *as an individual*. A similar matter occurred in a previous case, of a ship chartered by S. & W. from Liverpool to Calcutta and home, for the round sum of £7000,—of which £1200 were to be paid on the vessel clearing from Liverpool, £1000 on delivery of the outward cargo at Calcutta, and the remainder in cash, two months from the vessel's report inwards, and after right delivery of the cargo:—"*the captain to sign bills of lading at any rate of freight required*, without prejudice to this charter-party,"—and "the owners of the ship to have an absolute lien on the cargo for all freight, dead-freight, and demurrage:"—the charterer's agents at Calcutta were S. & C., who, having made advances for the vessel, shipped a quantity of linseed, for which the captain signed bills of lading, by which the linseed was *delivered to their order or assigns, on payment of five shillings per ton*,—while the current rate was £5, 10s.:—on account of this shipment S. & C. drew and endorsed a bill, *which, with the bill of lading, they delivered to a third party for value*:—it was held, that the true and honest endorsee of the bill of lading, without notice of the charter-party, was entitled to the linseed, on payment of the bill of lading-freight.[3]

[1] Kerr *v.* Deslandes, 8 Jur. *n. s.* 194. [2] Shand *v.* Sanderson, 4 H. and N. 38.
[3] Foster *v.* Colby, 3 H. and N. 705.

These two cases may show charterers and shipowners the impropriety,—nay, even the absurdity,—of themselves first agreeing on a fair and reasonable sum for the hire of the ship per ton, or for the whole,—and then, to depute their shipmaster (of whom they may, perhaps, know little beyond his ability as a seaman, and nothing of his susceptibility of cajolery) to sign bills of lading at any rate of freight that may be required,—*required by* whom? The shippers, no doubt, whose object is to have their goods conveyed at the lowest possible rate, and to whom a mere nominal freight,—a bill of lading freight,—is a very great advantage. But if the ship be a chartered ship, the shipmaster surely must know that he ought not to take any goods unless the goods of the charterer, and that, even for these, he should on no account sign bills of lading for less than the current freight of the day, and never for a nominal freight. Equally absurd is it to sign bills of lading bearing, "No freight, being owner's property," because *the shipmaster* has no authority to sign bills of lading *for a lower* rate of freight than that for which his owner has contracted;[1] and if the ship be a general ship, on board of which goods have been shipped at a nominal freight,—or at no freight, being owner's property,—and the shipowner has insured his freight for the voyage, calculated at the average rate,—yet, by some of the perils insured against, the ship does not arrive and earn freight,—what amount of *indemnity* can the shipowner recover from his underwriter? His nominal freight, or his no freight?

The following case affords a very instructive instance of the unexpected, though rightly enforced, results of such an unveracious and highly disreputable expedient as causing shipmasters sign bills of lading for an illusory freight or for no freight, which, on their very face, bears the impress of being related to some simulate and fictitious transaction:—S. was the owner of the ship *Helen* of Liverpool, and also partner of a mercantile firm there, and he arranged to consign the *Helen*, during several voyages in 1850 and 1851, to H., a partner of H. & C. H. of New Orleans, with general instructions to do the best he could in freighting the ship, or in shipping cotton on joint account of S. & H.:—when cotton was shipped on account of the shipowner, a nominal freight, or "no freight, being owner's property," was entered in the bill of lading; but, in the partnership accounts, the current rate was credited to S. and debited to the joint adventure:—on 8th May 1851, H. & C. H. shipped in the *Helen* 447 bales of cotton, and a bill of lading was signed, "to be delivered unto order or assignee, he or they paying freight for the said cotton as per bale, being owner's property, when draft against same is paid, say ——, with primage and average accustomed;" and, on 15th May, H. & C. H, also shipped 381 bales of cotton, and a like bill of lading was signed by the captain:—a draft, dated 8th May, was drawn for the invoice price of the cotton first shipped, and, on the same day, this draft was purchased by New Orleans merchants, who, as a security for the due payment of the draft, took, at same time, a blank endorsement of the first bill of lading; and, on 15th May, a draft was also drawn for the invoice price of the cotton second shipped, and purchased by the same merchants, and the second bill of lading also blank endorsed to them;—both were dishonoured when due, and were taken up by the merchants; and S., being indebted to other parties,

[1] Pickernell *v.* Jauberry, 3 F. and F. 217.

assigned to them, on 10th May, the ship *Helen*, in mortgage, and all her freight and earnings and with power to receive freight:—and when the ship arrived at Liverpool, these mortgages took possession of the ship and her cargo, and claimed from the New Orleans merchants, the endorsees of the bill of lading, payment of freight at the then current rate, which the endorsees paid under protest, and brought an action for repayment of the amount thus overpaid:—it was held, that the endorsees of the bill of lading were entitled to recover, as the circumstances showed full authority from S. to H. to ship the cotton upon the terms of the bill of lading, and though the second bill of lading was signed after the mortgage, that did not make the transaction null in regard to the endorsees, who honestly acquired the bills without notice.[1]

This case and the two cases immediately before cited, may show shippers and shipowners the unusefulness of making bills bear a mere nominal freight or no freight, as business people well know such statements to be manifestly untrue; but, in every fair and honest business transaction, it is the rule that the consignee and endorsee of a bill of lading, bearing the words, "he paying freight for the same," or a purchaser and endorsee from him (to whom, by section 1 of the Bills of Lading Act, the rights and liabilities pass by the endorsement of the consignee or endorsee of a bill of lading[2]), receiving cargo or goods under such a bill of lading, comes under the consequent obligation to pay the contracted freight for that cargo or for his goods.[3] But it is to be kept in mind, that, in a case before referred to,[4] the Court of Exchequer Chamber have decided, that, where the bill of lading bore that the goods were to be delivered to the named consignee, "or his assigns, he or they paying freight as per charter-party,"—a purchaser from the consignee, who, under an endorsement of the bill of lading, had entered the goods in his own name and paid the duties at the customs, and had acquired possession of these goods, yet that purchaser was not liable, under a contract inferred *by law* from these facts, to pay freight for the goods thus delivered to him, in terms of the charter-party; and though the Bills of Lading Act makes the consignee of the goods and endorsee of the bill of lading "subject to the same liabilities in respect of such goods as if the contract in the bill of lading had been made with himself,"—yet, to remove all dubiety as to this matter, it may be prudent for the shipmaster, in many cases, to require the endorsee to write on his, the endorsee's own copy of the bill of lading, such as the following:—"I request you to deliver to me the within referred to cargo (or goods), and I will pay (or settle) the freight in terms of the charter-party or bill of lading," as the case may be. If the charter-party or bill of lading also stipulates for demurrage, if incurred, this would require to be likewise inserted; and, should such a writing be refused, the captain can then operate upon his right of lien, as before directed.

It has happened, and it may again happen, that, though the usual phrase has been used, "he or they paying freight for the same," the captain finds, say, after the cargo or goods have been delivered, that he cannot get payment of his freight or of his whole freight, unless by taking a bill for the

1 Brown *v.* North, 8 W. H. and G. 1.
2 Smurthwaite *v.* Wilkins, 11 Scott, *n. s.* 812.
3 Kemp *v.* Clark, 12 Ad. and El. *n. s.* 647.
4 Sanders *v.* Vanzeller, 4 Ad. and El. 260.

whole or part. Upon this subject, the rules are:—"If the party, *having the offer of cash*, prefers a bill *for his own accommodation*, upon that he must seek his own remedy;"[1] but, "if the captain is to get payment *in the best mode he can*, and has no power *to get anything but a bill*, he must take that; but, *if he can get paid in any better mode, he should do so*, otherwise he will be bound by taking a bill."[2] As where a balance was due to the owner of a vessel by the broker, as adjusted between the latter and the captain, and the broker offered to pay that balance by a cheque on his bankers; but, as the captain wished the money transmitted to Jamaica, the broker, to enable him to do so, opened a credit for him at a bank here which had a branch in Jamaica, and the money was there paid to his order:—it was held, that the captain was authorised to receive payment in that way, and that the broker was entitled to charge that payment against the owner.[3] And in the case immediately before referred to, a cargo was shipped from St. John's, Newfoundland, for Bilboa, and the captain and part-owner signed a bill of lading making the cargo deliverable to the consignee or his assigns, *he or they* paying freight for the same, and the captain having delivered his cargo at Bilboa, obtained a bill for his freight; but, whether he had taken this bill for convenience or from necessity, because he could not get a settlement of his freight in any other way, did not appear; and this bill having been dishonoured, an action was brought against the consigner for the freight:—and it was held, that, if the captain took this bill of his own choice, without insisting for payment in cash, the consigner was thereby discharged,—but, if he took the bill because he could not get payment in cash,—then the consigner continued liable for the freight.[4]

When, by charter-party, part of the freight is made payable by bills,—in that case, the captain has merely to obtain these bills from the proper party and drawn in terms of the charter-party; but when freight is to be paid *in cash* on right delivery of the goods or cargo, and, in expectation of receiving this payment in cash, he has been induced to forego his lien over the cargo or goods, and to make delivery thereof,—yet, when he comes to get his freight paid in cash, he finds he can only obtain a bill for that, or part of it,—and as, in a great many instances, the shipper, freighter, or charterer remains liable to the shipowner for the contract freight,—the shipmaster, in such a case, should only consent to receive from the person to whom he has made delivery a bill for the freight, drawn and endorsed *by him* on or to the shipper, freighter, or charterer, *not as payment of the freight*, but as evidence that the freight has been earned and not paid, and thus opening the way for the shipowner's right to freight from the party with whom he had originally contracted.

Because it is well established, that the words, "he or they paying freight," are inserted in the bills of lading chiefly for the benefit of the shipowner and shipmaster, and do not import any obligation on the latter to refuse delivery according to his bill of lading until he is assured as to the payment of the freight, but gives him the choice of making delivery, and trusting to the payment of the freight from the party to whom

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[1] *Per* Gibbs, C.J., in Marsh *v.* Pedder, 4 Comp. 257.
[2] *Per* Bayley, J., in Strong *v.* Hart, 6 B. and C. 164.
[3] Anderson *v.* Hillies, 19 L. T. 92.
[4] Strong *v.* Hart 6 B. and C. 160.

this delivery is made,—or, failing payment by him, of having recourse to the merchant shipper.[1] So, in a case under a charter-party, the charterer engaged to load a complete cargo, and to receive the same at the appointed port of discharge, and *to pay to the master immediately on a right and true delivery of the cargo*, the agreed-on rate of freight, &c., and the cargo having been delivered at the port appointed, according to the directions of the charterer's agent to that effect :—in an action against the charterer for the freight, &c., it was held, that the above words in italics were introduced for the master's benefit only, and merely to give him the option, if he should think fit, to insist on receiving the freight abroad, before he would deliver the goods,—in which case, he might waive (relinquish) the benefit in his favour, and might deliver them without first receiving payment, and he would not thereby be prevented from having recourse to the merchant charterer.[2] And, in another case, goods were laden in Jamaica, and the captain signed a bill of lading in the usual form (there being no charter-party), which stated the goods to have been shipped by a W. F. in the ship bound for London, on account of a third party, the consigner, and were to be delivered in London to consignees, "they paying freight for the same;"—the goods shipped were the property of the consigner, and were delivered by the captain to the consignees, without receiving payment of the freight :—in an action against the consigner for payment of the freight, it was held, that the consigner and owner of the goods was liable by law to pay the freight to the shipowner, and that independently of any contract by charter-party, and was not discharged from his liability by the neglect of the shipowner to obtain payment from the consignees.[3]

So that, if cargo or goods have been delivered without receiving the freight, the shipper or consigner remains liable for that freight, whether under charter-party or bill of lading.

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[1] Cock *v.* Taylor, 13 East, 399. [2] Shepard *v.* De Bernales, 13 East, 565.
[3] Domett *v.* Beckford, 5 B. and Ad. 521.

VIII.—PORTS OF DISTRESS OR NECESSITY.

It has been thought proper to defer until this place the consideration of a ship being driven or forced by sea damage, or by the violence of the winds and waves, into a port out of the usual course of her voyage, for the purpose of repairing such damage, or of replacing or making up an exhausted or diminished sea-stock. An occurrence of this kind is not to be looked for on every voyage, and yet *may* happen on any voyage, and, therefore, the shipmaster ought to know, in such a case, what it is his duty to do, and also what he *ought* to do.

It is, of course, to be assumed, that, at the commencement of the voyage, the ship is sound, strong, stanch, and light, well found in sound and serviceable sails, standing and running rigging, and tackling and ground tackling,—and well provided in sea-stores and provisions *for the voyage*,—and, in all respects, so far as human skill, scrutiny, and precaution can make her, seaworthy for that voyage, and for encountering the ordinary risks of wind and weather incident to such a voyage. This state of seaworthiness is a most important condition, and is specially understood, though not expressed, in all contracts for conveyance of goods and merchandise, and in every policy of assurance on ship, goods, or freight.

Then, should the ship, thus seaworthy at the commencement, be so disabled by perils of the sea, during the progress, as to be incapable of continuing that voyage without necessary refitment, and should this not be otherways procurable, unless at a port which, though the nearest attainable, is out of the regular course of the voyage, but to which the captain, exercising his own sound judgment, resolves to go for this refitment,—in such case, it is the duty of the captain to enter, as soon as possible, in the ship's official log, full details of the storm,—its beginning, duration, and ending, —the damage sustained or suspected to be sustained,—the ship's position at the cessation of the storm,—and the position and distance of the nearest and the intended port of refuge,—and, when arrived in the port of refuge, these entries will be embodied in the protest made by the captain before a notary-public, or the British consul, or a foreign consul, if there be either at that port. To this instrument of protest will be appended the solemn declarations of the captain himself, of the first and second or only mate, and particularly of the carpenter, if the ship carried one, to the truth of the facts stated in the protest. And, if practicable at the port of refuge, a survey of the ship should be made by two or more skilled or professional persons, of whom, if there be an agent of Lloyd's at that port, he may be one; and their report should specify the then active state of the ship,—the repairs requisite to render the ship seaworthy for the remainder of the voyage to her port of destination,—and the capability of obtaining these repairs at that port.

These several documents the captain will transmit to his owner, retaining copies for his own guidance; and, if the ship be reparable, and the repairs can be had at the port he has come to,—his next duty will be, to have the required repairs executed as speedily as possible. In the circumstances, he is in duty bound to do the best he can for all concerned; and if, for facilitating the repairs, or from the perishable or probably damaged state of the cargo, it be found necessary to remove it from the ship, this

lays upon the captain the duties of agent for the shipper, and, as such, he is bound to take all proper preservative care of these goods, until they can be reshipped. "Though, in the ordinary state of things, he is a stranger to the cargo, beyond the purposes of safe custody and conveyance, yet, in cases of instant and unforeseen and unprovided necessity, the character of agent and supercargo is forced upon him, not by the immediate act and appointment of the owner, but by the general policy of the case." "Suppose the case of a ship driven into port with a perishable cargo, where the master could hold no correspondence with the proprietor; suppose the vessel unable to proceed, or to stand in need of repairs to enable her to proceed in time. In such emergencies (sudden occasions), the authority of agent is necessarily devolved upon him, unless it could be supposed to be the policy of the law that the cargo should be left to perish without care. What must be done? *He must in such case exercise his judgment*, whether it would be better to tranship the cargo, if he has the means, or to sell it. *He is not absolutely bound to tranship*,—he may not have the means of transhipment; but, even if he has, he may act for the best in deciding to sell;—if he acts unwisely in that decision, still the foreign purchaser will be safe under his acts:—if he had not the means of transhipping, he is under an obligation to sell, unless it can be said that he is under an obligation to let it perish."[1] "*In a case of absolute necessity*, the ship being wrecked, but the cargo saved, though perishable, and there are no means of transhipment,—in such case, an absolute necessity for sale would exist, and thereby the captain would be forced to become the agent of the owners for the purpose of sale."[2] "But *a captain has no power to sell, except from necessity*, considered as an impulse (*i.e.*, as the moving cause), *acting morally* to excuse his departure from the original duty cast upon him of navigating and bringing back the vessel."[3] "*Nothing but extreme necessity* will warrant the master in making a sale of *any part* of the cargo. I do not say, th at *even extreme necessity* would have warranted him in selling the whole."[4]

But, postponing this subject for the present, let it be assumed that the ship is reparable, and that she is in a place of safety where she can be so repaired as to render her *seaworthy for the rest of her voyage*, but the captain has no available funds to pay the expenses of the necessary repairs, and his present situation may make communication with his owner quite impracticable, so as to facilitate the puposes for which he is in that place of safety:—in these circumstances, what is the captain to do? In such a case, the law authorises the captain to adopt any one of the three following courses that may be suitable and adapted to his peculiar situation:—1. He may hypothecate (*i.e.*, pledge or pawn, but without putting the pledgee or pawnee in possession) the ship and freight, or, if these be not adequate security, he can also hypothecate the cargo,—the former by a bond of bottomry, and the latter by a bond of respondentia. 2. If his own vessel will not repair, or cannot be repaired in proper time, he can transfer the cargo from that ship to any other proper and seaworthy ship or ships, for the purpose of conveying it to its original destination:—and,

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1 *Per* Sir W. Scott (Lord Stowell), in *The Gratitudine*, 3 Rob. Ad. R. 255.
2 *Per* Bayley, J., in Freeman *v.* East India Co., 5 B. and A. 617.
3 *Per* Tindal, C.J., in Soames *v.* Sugrue, 4 C. and P. 278.
4 *Per* Lord Ellenborough, in Wilson *v.* Millar, 2 Stark, N. P. R. 1.

3. When, by the perils of the sea, the ship has been wrecked, and the cargo has become deteriorated, or has begun to putrefy, and this deterioration or putrefaction, were the voyage to be continued, would continue so to spread and increase, that, before its termination, it would have turned wholly worthless,—in this case, the captain can, at a port of distress or necessity, sell the wrecked ship and the spoiled or spoiling cargo, for the benefit of all concerned.

I.—BOTTOMRY AND RESPONDENTIA.

In a foreign port, the shipmaster can borrow money for the necessary purposes of the ship or voyage, and the owners, at any time and place, can also borrow money, and convey the ship (or share thereof), or the ship and freight, in security for the repayment of money so advanced, by *bonds of bottomry*,—the keel or bottom being put for the whole ship. The stipulation is, that, if the ship is lost in the course of the voyage, by any of the perils enumerated in the bond, the lender loses his money; but, if she arrives safe, then he is to be repaid his principal, and also the rate of interest agreed on, according to the risks, called *marine interest*,—which high interest is permitted to reimburse the lender, who, in all cases, and not the borrower, runs the risk. The right of a captain to take up money on bottomry, and grant a bottomry bond, is strictly guarded in law, and must arise out of unforeseen and unprovided necessity;—for he is not owner of the ship, much less of the cargo, and he cannot, therefore, bind the owner or part-owner of such property, unless in special circumstances, and for the general interest of all parties, in the protection and preservation of the whole. These circumstances must be:—(1.) The necessity must arise in the course of, and for the purpose of, continuing the voyage: (2.) It must be, generally at least, in a foreign port, where repairs, supplies, and necessaries have become necessary: (3.) The power of borrowing on bottomry must arise on account of his having no other credit or means of obtaining money upon the credit of the property.[1] But this case of necessity, which is the foundation of a bottomry bond, does not arise where there is a credit existing on which money can be obtained, without resorting to the real security of the ship. At the same time, it cannot be laid down as a universal rule, that an agent may not, under any circumstances, take the security of a bottomry bond, as cases may possibly arise in which an agent may be justified in doing so. It can be no part of his duty to advance money without a fair expectation of being reimbursed; and if he finds it unsafe to extend credit to his employers beyond a reasonable limit, he may then, surely, be at liberty to hold his hand, and to say, "I give up the character of agent;" and, as any other agent might, to lend his money upon bond, to secure its payment with marine interest.[2] And when the agent of a ship at a foreign port applied a balance of freight he had received in payment of law expenses incurred on ship's business, and took a bottomry bond for other payments, for which there was a lien over the ship:—it was held, that the amount of these law expenses could not be deducted from the bond.[3] So, a bond of bottomry, granted at New

[1] *Per* Sir John Nicholl, in *The Prince of Saxe-Coburg*, 2 Hag. 392; *The Edmond*, 1 Lushington, 57.
[2] *Per* Lord Stowell, in *The Hero*, 2 Dod. 139. [3] *The Edmond*, Lushington, 211.

York by the captain of a ship, the owner of which resided at St. Johns, New Brunswick (a communication existing by electric telegraph between the two cities), was held to be valid, though the bondholder had previously acted as agent in the concerns of the ship, and no communication of the bottomry transaction had been made to the owner until after the bond had been executed.[1] And a bottomry bond, dated at Miramichi the day before the vessel sailed, with 20 per cent. interest, given to the consignees of the charterers, was sustained;—these consignees having been directed by the charterers to draw upon the owners for reimbursement of other than trivial payments; and it being held that the bond was originally contemplated,—that the bill of exchange drawn did not affect it,—and that the bankruptcy of the owners did not affect it.[2] But a bottomry bond granted at Hobart Town (under threat of arrest by the owner's agent, for whose benefit, in part at least, the bond was granted), and reciting that it was granted to enable the captain to pay "for necessaries supplied for the intended voyage, and for the use of the brig," was not sustained, not having been conditioned for previously.[3]

It is the general rule, that bonds of bottomry can alone be given for the furtherance of the voyage in which the ship is engaged, and this principle is not affected by the circumstance that, by the law of the country where the ship is, she may be arrested and sold for any debt owing by the owner to a creditor resident in that country. And, therefore, where a bond of bottomry was given by the captain in order to release his vessel from arrest, for a balance on accounts current owing by the owner to his agent in Malta, and incurred anterior to the voyage in which the ship was engaged at the time,—this bond was not sustained.[4] So, also, a bond of bottomry cannot be carried back to cover money which had been originally advanced upon the *personal credit* of the owner, without any such security being then in contemplation; and, therefore, where a sum was advanced to the master for necessary supplies, and bills of exchange drawn on the owners for the sum so advanced, and a further sum was subsequently advanced; but doubts having arisen as to the owners' responsibility, a bond of bottomry was taken for both sums;—this bond was held invalid as to the first sum.[5] But if money has been advanced to the captain, upon the understanding that such a bond was to be granted, then the execution of the bond may be delayed, until the whole amount of the expenses and of the money necessary to defray these has been ascertained and advanced; but it can have no reference to money which was advanced before any such security was in contemplation.[6] And when a captain orders repairs for his ship, and borrows money on bottomry to pay for these repairs, he is the agent alone of the shipowners in ordering the repairs and borrowing the money.[7] Thus, where a bond of bottomry recited, "that the outward freight was insufficient to pay the just charges of the British consul, and the necessary disbursements on the vessel," and which bond was proved to have been given for a loan of money, in great part required for the consul's commission;—the bond was sustained.[8] And it has been already remarked, that though it is usually

1 *The Oriental*, 3 W. Rob. 214.
2 *The St. Catherine*, 3 Hag. 250.
3 *The Hersey*, 3 Hag. 404.
4 *The Osmanli*, 3 W. Rob. 198.
5 *The Augusta*, 1 Dod. 283.
6 *Per* Lord Stowell, in *The Hero*, 2 Dod. 142.
7 Benson *v.* Duncan, 4 W. H. and G. 644.
8 *The Zodiac*, 1 Hag. 320.

required as a condition necessary to give validity to bonds of bottomry, that these should be granted in a foreign country, yet the extreme difficulty of communication between a captain and his owners is also an important circumstance to be kept in view, as occasions may arise in which the different ports of the same kingdom may be as much separated and cut off from all communication with each other, as if they were situated in the most distant parts of the globe.[1] It is the general rule, however, that in the place of the owner's own residence, where he can exercise his own judgment upon the propriety of taking up money on bottomry, the captain is precluded from doing so without the owner's consent.[2] This term, "place of the owner's residence," has received a large interpretation; and, in the opinion of the learned author now cited, the whole of England is to be considered, for this purpose, *as the residence of an Englishman*, at least before the commencement of a voyage; and this opinion is confirmed and extended, looking at the present improved facilities of communication to all parts of the United Kingdom. So a bond of hypothecation, granted by the captain and owner of a British ship, who was described as "of London,"—for the necessary repairs and outfit of the ship in Jersey, one of the Channel Islands belonging to Britain,—was sustained.[3] And it has been held, that where communication is practicable between the captain in the port of distress and his owner, it is not enough that the owner be made aware of the disaster that has happened to his ship, but he should be also informed of the captain's intention to hypothecate.[4]

As to the necessity of communication with the owner by the captain, previous to his raising money on bottomry,—if this communication can be had in reasonable time, it is plainly his duty to do so. But the necessity of this previous communication with the owner will be much affected by the particular locality and circumstances in which the vessel may happen to be placed, as that locality and these circumstances may be such as to justify the want of any previous communication. As in a case already referred to, where the captain granted a bottomry bond at New York, and his owner resided at St. Johns, New Brunswick, and though no intimation (an electric telegraph existing between the two cities) had been made to the shipowner of the bottomry transaction until after the bond had been executed, yet the bond was sustained.[5] It has been held, that a letter from the British consul in a foreign port, written on behalf of the master of a small British ship and his agent, informing the consignee in England of the damage which the ship had sustained, but making no application for money, nor referring to the necessity for repairs, was sufficient notice for the purpose of raising money on bottomry.[6] And a bond of bottomry on ship *and cargo*, granted in the country of the owners' residence, by the captain, with their consent, but without any previous communication with the owners of the cargo, was sustained.[7]

It will be immediately noticed, that the captain has power, in a case of extreme necessity, to hypothecate the cargo also; and where a loan on bottomry is made to extend over the cargo as well as the ship, it is reasonable that the owners of the cargo should have the same notice, in

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1 *Per* Lord Stowell, in *La Ysabel*, 1 Dod. 274.
2 Abbot, 114.
3 *The Barbara*, 4 Rob. 1.
4 *The Oliver*, 6 L. T. *n. s.* 259.
5 *The Oriental*, 3 W. Rob. 243.
6 *The Bonaparte*, 17 Jur. 285.
7 *The Bonaparte*, 3 W. Rob. 298.

the same circumstances, as is required to be given to the owners of the ship. Accordingly, in one case, where a vessel bound from a port in Sweden to Hull was driven back by stress of weather, and on 21st November put into another port of Sweden; ten days afterwards, her cargo was unladen, and she was found to be greatly damaged:—the repairs were completed, and on 26th March, without any attempt to communicate with the owners of the cargo, the captain hypothecated the ship, *cargo*, and freight, for money borrowed to pay for the repairs, and on 7th April the voyage was completed, and the ship and cargo arrived in Hull:—it was held, that, considering the length of time, and the distance between England and Sweden, and the means of communication existing, the captain did not do his duty to the owners of the cargo; and that there being no evidence of any attempt to communicate with the owners of the cargo, the hypothecation could not stand.[1] And where a bottomry bond was granted by the captain on the ship, cargo, and freight, at the port where the individual owner and charterer of the ship resided;—advertisements for the loan on bottomry had been previously published, and the owner and charterer was aware of these advertisements, of the unseaworthy condition of the ship, and of the fact that his cargo had been laden and unladen while the ship was in port; but no more direct communication, nor any application for advances, was made to him:—it was held, that the advertisements were not sufficient notice, and the bond was held bad, so far as the interest of the owner of the cargo and charterer were affected.[2]

Where the ship is in a situation which justifies the captain in borrowing money on the security of the ship, he can, for the same purpose, pledge the freight of the voyage on which the ship is engaged, and extend the same security over it; and even extend the security not only over the freight of that present voyage, but over the freight of a subsequent one. As where a ship was about to sail from Baltimore to Cork, and the captain granted a bottomry bond binding the ship and freight in general terms, not expressly confined to that particular voyage, nor extended to future voyages; and the vessel sailed from Baltimore to Dublin, then to America, and from thence to London, where she was arrested by the bondholder, and the produce of the ship being insufficient to discharge the bond:—it was held, that the freight of the last voyage, then in the hands of the agents of the owners, was attachable under the bond.[3] And where the bond was given over the ship and cargo, not mentioning the freight, and the ship proved insufficient to pay the bond, on a motion at the instance of the owners of the freight, the freight was ordered to be brought into court, as incident to the ship; and it was decided that the ship and freight must be exhausted before resort was had to the cargo.[4]

Though it is the general rule that freight is not due until the voyage be performed, the parties can agree, by charter-party or otherwise, that the freight shall be paid in such a manner as to control this general rule; and, therefore, where advances of freight have been made, under such a charter-party, anterior to the time when a bottomry bond is given, that bond does not attach upon the freight thus truly and honestly advanced.[5] And where a captain, after having given a bond over ship and freight to one

1 Williamson *v.* Wilson, 18 L. T. 161.
2 *The Nuova Loanese*, 17 Jur. 263.
3 *The Jacob*, 4 Rob. 245.
4 *The Dowthorpe*, 7 Jur. 609.
5 *The John*, 3 W. Rob. 170.

person, chartered his ship to a merchant, who, by the terms of the charter-party, was to advance part of the freight, to defray expenses already incurred; and the charter-party then provided for payment of the balance of the freight to the bondholder, in discharge of the bond:—it was held, that the latter had no claim upon the freight so advanced, as against the consignee of the cargo and the assignee of the freight.[1]

If, in the course of the voyage, several bottomry bonds have been given, some binding the ship and freight, and others the ship, freight, and cargo, the Admiralty Courts will apportion the whole proceeds, directing one set of claims to be satisfied from the cargo, and another from the ship and freight;[2] and if more than one bond has been granted, at several times during a voyage, the last in date (if shown to have been absolutely necessary in the then state of the ship) is entitled to be paid in the first place, as it is held that the money afforded by it provided the means of preserving the ship, and of saving the subjects of security for the whole bonds,[3] after the seamen's wages have been paid, as these have the preference before all other claims.[4] And it has been held, that a bottomry bond is to be preferred to a claim for necessaries, which had been supplied before the bond.[5]

It has been held, that the freight earned from sub-shippers of goods, by permission of the charterers of the whole ship, is liable, as against them, in payment of a bottomry bond given at the port of the charterers, subsequent to the charter-party;[6] and it has been held, that the receipt of freight by the creditor of a bottomry bond is, in law, a receipt of it by the ship-owner, whose captain had given that bond for money borrowed to pay for the necessary repairs of his ship at a foreign port.[7]

When the value of the ship and freight, on the assumption that she arrives in safety at her destination, is judged to be an insufficient security for the amount of the expenses of repairs, &c., necessary to put the ship in a proper condition for prosecuting her voyage and delivering the cargo at her port of destination, the captain has power, in such circumstances, of necessity, by bond of respondentia, to hypothecate the cargo, as well as the ship and freight, for the money so advanced for this absolutely necessary purpose.[8] In one case, where a bond of bottomry was given over the ship, cargo, and freight, to be paid within twenty-one days of the ship's arrival in the Port of London, and not to be demanded or received in case the ship and her cargo be lost, miscarry, or cast away on the voyage,—the ship was abandoned as for a total loss at Algoa Bay, where part of the cargo was sold, and the proceeds remitted to England, and part was put into another ship and brought there; but it was not proved that the ship could not, in fact, be repaired:—it was held, that the bottomry bond must be pronounced for, and enforced against the proceeds of that part of the cargo sold, and that part of it transhipped.[9]

So, in another case, the captain of a Swedish ship had granted, in Sweden, a bond upon ship, cargo, and freight, the owners of the cargo being British, and to them no notice was given; but the shipper was applied to,

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1 *The Cynthia*, 16 Jur. 749.
2 *The Trident*, 1 W. Rob. 29.
3 *The Eliza Weddell*, 3 Hag. Ad. Rep. 87.
4 *The Hersey*, 3 Hag. 407.
5 *The W. F. Safford*, 1 Lushington, 69.
6 *The Eliza Weddell*, 3 Hag. 87.
7 Benson *v.* Chapman, 2 H. of L. C. 696.
8 *The Gratitudine*, 3 Rob. 240.
9 *The Elephanta*, 15 Jur. 1185.

and refused to advance. The captain did not attempt to tranship the cargo, but borrowed the sum of £390,—and the ship having been judicially sold for less than that sum, being the amount of the bond:—it was held, that the bond was good against the cargo.[1] And when a ship with cargo was stranded on a foreign coast, and was unable to proceed on her voyage, and communication with the owners of the cargo would have been attended with great delay and difficulty:—it was held, that in order to tranship and send the cargo on, the captain could, on his own authority, grant a respondentia bond to release the cargo under arrest for salvage; but this respondentia bond will not cover part of the cargo not exposed to sea risk,—and if only part of the hypothecated cargo reach its destination,—that part is only liable to pay a proportional part of the sum in the bond, according to the proportion that the value of the goods brought to their destination bears to the total value of the whole property over which the bond has been granted.[2] When, at a foreign port, a cargo has been landed, stored, and transhipped, and a respondentia bond granted for the charges,—though the custom of the particular port will be considered, commission will not be allowed to be charged as items on the bond beyond a reasonable amount, calculated according to the rule,—How much has he deserved?[3] But a bottomry bond upon the ship, *cargo*, and freight, granted after the repairs are executed, and a contract of affreightment has been made, but before the actual shipping of the cargo, is not effectual against the cargo.[4]

As it is the duty of the shipmaster, when his ship is thus damaged, to do all that can reasonably be done in order to repair her, so as to bring home her cargo and earn freight; and if he order such repairs, and borrows money on the security of the ship, *cargo*, and freight, to pay for these repairs,—in doing so, he is solely the agent of the shipowner; and, therefore, if the owner of the cargo has to pay any portion of the amount of money so secured, the shipowner is bound to make good to him the sum he has thus paid,[5] and he has his action against the owner of the ship for all costs and charges he has thereby incurred.[6] So a shipmaster, whose ship was in need of repair at Constantinople, borrowed money on 12th October, with consent of his owner, on security of ship and freight; and at Odessa, a second bond, dated 11th December, was granted on ship, freight, and cargo; and a third, dated 13th January, was granted at Syra, also on ship, freight, and cargo:—the proceeds from the freight and from the sale of the ship were not sufficient to discharge all these bonds:—it was held, that the owners of the cargo could not be forced to contribute to the payment of the last two bonds, so as to leave funds for payment of the first bond, while the proceeds of the ship and freight were not exhausted.[7]

It is the general rule, that every outlay of money made at a foreign port, in or about the ship herself or her crew, and necessary to enable the ship to proceed on her voyage, and for which the captain or owner is liable,—as for necessary repairs and articles supplied to the ship for this purpose,—is a proper subject for such a security over ship, and freight, and cargo.[8] And such a bond may be given to a person who has become surety for these

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1 *The Bonaparte*, 14 Jur. 605.
2 *The Sultan*, 1 Swabey, 504; 5 Jur. *n. s.* 1060.
3 *The Glenmanna*, 1 Lushington, 115.
4 *The Jonathan Goodhue*, 1 Swabey, 355.
5 Benson *v.* Chapman, 2 H. of L. C. 696; Benson *v.* Duncan, 4 W. H. and G. 644.
6 *The Oliver*, 6 L. T. *n. s.* 259.
7 *The Priscilla*, 5 Jur. *n. s.* 1421.
8 *The Prince George*, 4 Moore's P. C. C. 21; *The Edmond*, 30 L. T. 128.

necessary repairs and supplies, though no money has been actually advanced by him,—of the necessity of which bond, the consent of a managing part-owner is strong evidence, and his consent binds his co-owners.[1]

Bonds of bottomry are generally given by captains appointed by the owners themselves, or by the charterers, as owners for the time; but these bonds may be given by captains substituted and appointed abroad, and by masters by succession—as such a bond was sustained, which had been granted by a substituted captain appointed by the consignee of the cargo, by whom, also, the money was advanced.[2] So, also, a bottomry bond was sustained which had been granted by a captain appointed by the consul, though some imputation was attempted to be thrown on the consul's motive for making the appointment.[3] Where, also, owing to a mortality in the West Indies, there had been a succession of captains, who were appointed under various circumstances, in different islands, and by the agents or consignees, and some of whom gave bonds for repairs done, not only by their own order, but by the directions of their predecessors; these bonds were sustained, there being nothing to impeach the integrity of the whole transaction.[4] In like manner, a bottomry bond was sustained which had been granted by a captain appointed chiefly by the underwriters.[5] And where a British ship, the captain and officers of which had been murdered in a mutiny, came into a foreign port, and was there taken possession of by the British consul, and a captain was appointed by him, who gave a bottomry bond on the ship,—this bond was held good.[6]

It may be a question whether the lender of money on a bottomry bond is bound to see to the application of the money he so advances; but, be this as it may, it is clear that the lender must make due inquiry, to ascertain that the necessity for the advance actually does exist,—that, without money to repair, the ship cannot proceed on her voyage,—that the necessary funds cannot be had from any source or in any other manner,—and that the sum required is only commensurate to the existing necessity. In one case, without any such previous inquiries, advances were made on bottomry to the captain of a ship, which had arrived with a considerable cargo in that foreign port, and remained there two months;—her repairs, which were unimportant, were completed, and her stores furnished, before the advance; there was no fraud on the part of the bondholder; yet, as there was no real necessity for borrowing at marine interest, the bond was not supported.[7]

II.—TRANSHIPPING CARGO.

The powers of a shipmaster of raising money to repair and refit his ship in a port of distress or necessity, on the security of the ship and freight and of the cargo, have now been considered:—but, let it be that, though in a place where the ship could, if capable, be repaired,—yet, the ship is not reparable at all, or the necessary repairs cannot be obtained, or, money cannot be had to pay for the necessary repairs,—in such a case, he *may tranship* the cargo, if he has the means of doing so,—or, he may sell the cargo,

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[1] *The Royal Arch*, 1 Swabey, 269.
[2] *The Alexander*, 1 Dod. 278.
[3] *The Zodiac*, 1 Hag. 320.
[4] *The Wakefield*, July 1826, *per* Sir C. Robinson, in *The Kennersly Castle*, *inf.*
[5] *The Kennersly Castle*, 3 Hag. 7.
[6] *The Cynthia*, 16 Jur. 748.
[7] *The Orelia*, 3 Hag. 75.

or as much of it as will defray the expenses thus necessarily incurred. Here will be considered the question of transhipment.

By the *Ordonnance de la Marine*, liv. 3, tit. 3, s. 11, it is directed, that, "if the master is forced to make repair of his vessel during the voyage, the loader shall be bound to wait, or to pay the first freight, and in case that the vessel cannot be put right, the master shall be obliged forthwith to hire another; and if he cannot find another, he shall be only paid for his freight in proportion to that which the voyage shall be advanced." On this article Valin remarks:—"If, nevertheless, the ship cannot be put right in a way to be able to continue its voyage with safety (to effect which, before commencing to work at the refitting, he will act to cause an inspection to be made by experts,—skilled persons,—who will make their report in form), *the master*, says our article, shall be bound forthwith to hire another; that which appears extremely hard in this respect, seeing that the matter here is of a casual event or proceeding from a greater power, in consideration of which justice desires that, if it be free to him to hire another ship if he shall think it fit, in order to the continuing of the voyage, besides laying on him the obligation of being so much better able than the merchant loaders to convey from the difficulties, by the substitution of another ship, he will be constrained to take one much more safe than his own appeared at first, and by it to pay a freight much more considerable than that which he intended to earn." And Art. 296 of the *Code de Commerce* ordains, that, "In the case where the ship cannot be repaired, the captain is bound from this to hire another." [1]

It is the law in this country that, if the ship, having been in all respects seaworthy at the commencement, becomes disabled during the voyage, by the perils of the sea, and without any fault of the captain, he can either repair his own ship or freight another. And Lord Ellenborough said very distinctly:—"If the ship be disabled from completing her voyage, *the shipowner may still entitle himself to the whole freight, by forwarding the goods, by some other means, to the place of destination.*" [2] In the following case, it was expressly decided that, in such a case, if the captain think fit, he is at liberty to tranship, and to earn the whole original freight by the goods arriving at their proper destination.

In the case referred to, goods had been shipped at Singapore for London in a general ship, the *James Scott*, which, having encountered severe gales, was obliged to put into Batavia; and, from the damage that the ship and cargo had sustained, it was found necessary to tranship the cargo by other two vessels, the *Mountaineer* and the *Sesostris*, and the bills of lading by these vessels made the goods deliverable to another party, and at a less rate of freight than the original bill of lading:—it was held, that the captain is bound, if he has the opportunity, to forward the goods by some other conveyance to their place of destination; and, at any rate, he is at liberty to do so by a conveyance equally cheap, if he think fit; and, if the goods arrive at the place of destination by such other conveyance, he is entitled, on the freighter obtaining the goods, *to the whole freight originally contracted for*, though the freighter was named as consignee in the original bill of lading, and, by the second conveyance, the goods are carried for less than the freight originally contracted for.[3]

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[1] 2 Valin, 58–60. [2] Hunter *v.* Prinsep, 10 East, 378.
[3] Shipton *v.* Thornton, 9 Ad. and El. 314.

Here, the substituted ships were hired at a less rate of freight, by *the captain of the original ship*, to bring home her cargo from an intermediate port; but if the cargo has been *loaded* from a disabled vessel at an intermediate port, and left there by the captain of that vessel, but is subsequently sent on to its destination by another vessel, engaged not by or on account of the owner of the disabled vessel, *but in the name and on behalf of the owners of the cargo*,—the former is not entitled to the original charter-party or bill-of-lading freight, but only to freight for that portion his ship had actually performed. As, a ship was chartered with a cargo of coals from London to Solada, in the River Plate, and to deliver the same either there or at Buenos Ayres, and there to reload and proceed to a port between Gibraltar and Antwerp, as the freighter's agents might direct, at a sum in full for the voyage out and home, to be paid in the manner stated:—the ship performed the outward voyage, and delivered that cargo at Buenos Ayres, and having there loaded a homeward cargo, the freighter appointed Gibraltar as the port of discharge:—but this ship and about one-third of the cargo were lost by the perils of the seas, and the remainder of the cargo was saved, and left by the captain at the island of Fayal,—he himself having, shortly afterwards, left for England, informing, *by letter*, the vice-consul at Fayal of the expected arrival of a vessel there, and advising him, if he could not get a reduction of £400 for the freight, to give that sum for the conveying of the rest of the cargo to Gibraltar, rather than lose an opportunity of sending it forward:—*no agreement was made by the captain for the hire of a vessel on account of the owners of his lost ship, nor did any authority appear to have been given to the vice-consul to do so; nor did the captain personally make any provision for the conveyance of the remainder of the cargo to its destination, nor did he superintend its transhipment, or accompany it to the port of discharge*:—but, five days after the captain had left for England, a vessel of sufficient capacity arrived at Fayal, *which the vice-consul chartered on behalf of the owners* of the cargo, at a freight of £360, to convey the goods to Gibraltar; and these were accordingly delivered to the owners there, who paid £378 of freight and charges:—in an action by the owner of the original ship for the freight in the charter-party, it was held, that the goods left by the captain at Fayal, having been forwarded to Gibraltar by the vice-consul, acting in the name and on behalf of the owners of the cargo, and at their expense, cannot be held to have been carried to their destination by the original ship, in fulfilment of the charter-party, and, consequently, that the freight agreed to be paid has not been earned; but, as the ship actually brought from Buenos Ayres to Fayal, on her way to Gibraltar, a considerable portion of the cargo, and that portion had come to the hands of the freighters, and had been accepted by them,—the shipowner cannot claim beyond a *reasonable freight* from Buenos Ayres to Fayal.[1]

Here, the captain of the lost ship was very blamable in going off to England, and leaving the rescued portion of the cargo to the next-to-unpaid care and disposal of the consul at Fayal, which, in effect, deprived his owner of a valuable freight, besides landing him in the expense of a lawsuit. And it is highly blamable in a captain, when it may become necessary to tran-

[1] Mitchell *v.* Darthez, 2 Bing. *n. c.* 555.

ship a cargo from his ship, to attempt to secure a profit for himself, as was attempted in the case now to be detailed.

A ship, the *Planter*, was chartered to bring a cargo of guano at a freight of seventy shillings per ton; and a considerable amount of advances were made on account of the freight by the charterers' agents to the captain in South America;—but, after the cargo had been shipped, the ship became, in consequence of sea damage, unfit for proceeding on her voyage; and the charterers' agents having declined to interfere in transhipping the cargo to another vessel, so as to be conveyed to its destination, the captain of the *Planter* chartered for that purpose the *Alarm* in his own name, and, in the bill of lading, he was made the shipper, and the charterers the consignees, to whom the guano was to be delivered, and the same amount of freight was to be paid as in the original charter-party; but, by a private agreement between the two captains, it was bargained that the captain of the *Alarm* was to keep only forty-six shillings per ton as his rate of freight, and was to hand the surplus to the captain of the *Planter*;—the guano arrived, and the charterers required delivery, and offered to pay the difference between the amount of the original charter-party freight and the advances made by their agents in South America, to the captain of the *Planter*; but this was refused, and an action was brought for the full original freight of seventy shillings per ton;—but it was held—(1.) That when the captain of the *Planter* chartered the *Alarm*, the contract must be held as made by him on behalf of his owners, and not on behalf of the charterers: (2.) That if it was entered into by him as agent of the charterers, it was bad,—1st, as being fraudulent to the knowledge of the captain of the *Alarm*,—and, 2d, as being beyond any authority the captain of the *Planter* could exercise in the position in which he was placed, and, therefore, the charterers were not bound by it: and, (3.) That if the contract was entered into by him as agent of his owners, they did not have a lien they could convey to the captain of the *Alarm*, so as to entitle him to keep back the goods *until the whole* of the freight was paid.[1]

In the event of a transhipment being made, doubts may arise whether the insurances on the original ship, and on the goods laden therein, continue on the substituted ship, and on the same goods when transferred to that ship. And first, as to changing the ship,—the general rule is, that, after the risk has once begun *upon the ship named in the policy, that ship* must not be changed unless from absolutely necessity; but if the ship, during the voyage, becomes disabled by the perils of the sea, the captain of that ship may engage another ship, and by it forward the goods to their destination, yet, his so engaging another ship does not appear, from any reported case, to have the effect of transferring the insurance upon *the named ship* to the substituted ship. However, any doubt as to this may be easily removed by inserting in writing a few words at the proper places in the policy on ship, or on ship and goods, so as to make the insurance continue on any other equally seaworthy ship that may, from absolute necessity, have to be substituted in order to the completion of that begun voyage.

Again, secondly, as to the effect that the transfer of the goods to another ship has upon the insurance of these goods,—it has been long settled, that

[1] Matthews *v.* Gibbs, 7 Jur. *n. s.* 186.

the transferring of the goods from one ship to another, *when done from an absolute necessity*, does not discharge the underwriters upon these goods. This appears to have been first held in an old case,[1] of which the facts were:—bullion and other goods were insured in the ship *Duras*, "at and from Marseilles to Madeira, the Cape, Isles of France and Bourbon, and to all places in the East Indies, from place to place, during her stay and trade there, and till her return back to France,—upon any kind of goods, and also on the ship;"—on the voyage out, the *Duras* was lost, but great part of the bullion, and a considerable part of the goods, though damaged, were saved, and were sent on in another ship to Pondicherry, and were there disposed of by the insurer's correspondents, and the proceeds invested by them in Indian goods, which were shipped for France to the insured in the *Père de Famille*:—this ship was, however, condemned at the Isle of France as unfit to proceed; and these goods were again transferred to another French ship, the *Louise* (to which certain of the underwriters agreed), but which was captured by a British privateer and condemned:—the insured suffered a loss of 12 per cent. on the sum subscribed; and, in an action against one of the non-agreeing underwriters, the court was very clearly of opinion, that the underwriters *on goods* were not discharged from a loss on the goods taking place after the transhipment.

In a more recent case, goods were insured by the ship *Penang*, from Liverpool to certain ports in China, and the policy granted most extensive liberties *to tranship the cargo to any other ship*,—to visit any port in any order, and to remain there till it should be deemed expedient to proceed to her port or ports of discharge, continuing the risk "*until the goods should be arrived at their final port of destination:*"—friendly relations between Britain and China being then suspended, to have sent the goods up the river to Canton would have been dangerous,—the consignees finding it necessary, on account of sea damage, to take means to tranship the goods, hired another ship, the *James Laing*, to receive the goods, and sent her with the *Penang* to Hong-Kong,—the safest anchorage in the Chinese seas,—that they might be there transhipped into the *James Laing*, and might remain on board that ship until they could be warehoused at Hong-Kong, or sent on to Canton, or to some other market in China:—but, while the goods were in the course of being thus transhipped in the roads of Hong-Kong, a violent typhoon or hurricane came on, and, in it, the *James Laing*, and the goods transhipped to her, were sunk and totally lost:—in an action on the policy for this loss of the goods, it was held, that the risk on the goods in the *James Laing* was a continuing risk, under the policy, at the time of the loss, and that Hong-Kong was not the final port of destination in the sense of the policy.[2] But, in another action on a policy upon goods in the *Penang*, which was lost at the same time by the same typhoon,—there were not similar liberties of transhipment, &c.:—it was held, that, as there was no liberty to visit any port in any order, or to tranship the goods on board any other vessel, the going to Hong-Kong was a voluntary departure from the voyage insured, and, therefore, the underwriters were thereby discharged.[3]

Transhipment, when absolutely necessary, as now considered, must not be confounded with a transhipment that may take place according to the

[1] Plantamour *v.* Staples, 1 T. R. *note*, 611. [2] Oliverson *v.* Brightman, 15 L. J. 274.
[3] Oliverson *v.* Rotherham, 8 Q. B. 781.

known and established usage of any particular trade. The latter, if well known and long established, does not require to be specially communicated to the underwriters; but, in order to remove any dubiety as to an insurance *on goods* continuing over the same goods, when removed, *from an absolute necessity*, into another ship, it might be proper, in a policy on goods, to grant the insured, in case the named ship becomes disabled and incapable of proceeding, liberty to tranship the insured goods, in such a case of absolute necessity, to another ship. But insuperable difficulties bar such a liberty being granted in regard to the ship; and the shipowner must be satisfied with his claim for a loss actually or constructively total, or partial only, according to circumstances.

III.—SALE OF CARGO OR SHIP.

The power of a shipmaster to sell part of his cargo in order to pay for the necessary repairs of his ship, when, in a port of distress or necessity, all other resources fail, has been already considered (*ante*, p. 80, *et seq.*); and it may be here repeated, that as the shipmaster is merely a common carrier, whose primary duty is to convey, with proper care and circumspection, to their appointed destination, the particular goods which, by his bill of lading, he acknowledges to have been shipped in good order and condition, and which he thereby engages to deliver in the like good order and condition to the appointee therein mentioned,—so, the captain has no right and no power to sell any part of the goods, in ordinary circumstances,—he being held to be an absolute stranger as to any right of property in these goods. But though the captain has, in ordinary, no such power, and let it be assumed that all endeavours to procure money have been made and have failed, then, if "no prudent man, in the exercise of a sound and vigorous judgment, would hesitate as to the propriety of selling," the captain "is justified in selling, as the best thing that can be done."[1]

In such a case, Sir W. Scott (Lord Stowell) has said:—"Suppose the cargo to be not instantly perishable, but that it can await the repair of the ship, what is the master to do, being a stranger in a foreign port, in a state of distress, without any opportunity of communicating with the owners or their agent? What does the necessity of such a case offer to be done? I conceive one of two things,—*to sell a part of the cargo*, for the purpose of applying the proceeds to the prosecution of the voyage by the repair of the ship,—or *to hypothecate the whole*, for the same purpose. With respect to the former, the books overflow with authorities:—they all admit that he may sell; some ancient regulations have attempted to define what part; others have not. The general law does not fix any aliquot (so many) parts; and, indeed, it is not consistent with good sense to impose a restraint, or to fix any limitation to measure a state of things *which is to arise only from necessity. It must, generally speaking, be adequate to the occasion*"—"*the power of selling for the repairs of the ship, must be limited to the sale of a part, though it may not* be possible to assign the exact part."[2]

But, in selling part of the cargo for the purpose of raising money to pay for the repairs absolutely necessary to continue the voyage, besides

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1 *Per* Tindal, C.J., in Soames *v.* Sugrue, 4 C. and P. 276.
2 *Per* Lord Stowell, in *The Gratitudine*, 3 Rob. Ad. R. 241.

preserving distinct evidence of the absolute necessity for the sale, and of no more having been sold than was required for the necessary repairs requisite to fit the ship for continuing her voyage,—the shipmaster should enter in his log the special articles or quantities sold, and the prices at which each sold, for the special purpose of identifying (so to speak) the particular parts of the cargo thus necessarily sold. Because, though the shipper of these has no claim for their value under his insurance, as it has been held, that, when a ship has been disabled by the perils of the sea from pursuing her voyage, and puts into a port to repair, and the captain, having no other means of raising money to defray the expense of these repairs, sells part of the goods, and applies the proceeds in payment of these expenses, the underwriter is not answerable,[1]—yet, as the burden of repairing the ship falls exclusively upon the shipowner, he is bound to repay to the goods owner the market value of his goods thus sold, and also the current profits that might have been realised at their port of destination.[2]

Further, and distinct from any sale made *to pay for necessary repairs*, goods on board may be of a perishable nature, and it may be certain (to use the words of Lord Abinger on another question [3]), "that, before the termination of the original voyage, the species itself would disappear, and the goods assume a new form, losing all their original character,—and in such and the like cases, the captain is under a necessity of selling, as the best for the benefit of all concerned." Lord Stowell has put a case:—"Suppose a ship driven into port *with a perishable cargo*, where the captain could hold no correspondence with the proprietor; suppose the vessel unable to proceed, or to stand in need of repairs to enable her to proceed in time. In such emergencies (sudden occasions), the authority of agent is necessarily devolved (forced) upon him, unless it could be supposed to be the policy of the law that the cargo should be left to perish without care." "*He must, in such case, exercise his judgment:*"—"he may act for the best in deciding to sell:—if he had not the means of transhipping, *he is under an obligation to sell, unless it can be said that he is under an obligation to let it perish.*"[4] To the same effect says Mr. Justice Bayley: "Suppose that the cargo was saved, *being perishable*, and there were no means of transhipment, *in such case, an absolute necessity for sale would exist, and thereby the captain would be forced to become the agent of the owners, for the purposes of sale.*"[5]

From these valuable opinions, and the special obligation in the bill of lading, besides the special interest of the shippers themselves, it may naturally be inferred, that,—apart altogether from any necessity on the part of the ship,—the instances will be few in which a sale,—*owing to the rapid deterioration or rapidly increasing putrefaction of perishable goods*,—will be rendered *absolutely necessary* by the shipmaster at an intermediate port. And, unless there be such a necessity *from this cause*, the captain and his owner will be answerable to the shipper for the value of his goods so unnecessarily and improperly sold.[6]

Then, in regard to the sale of the ship by the shipmaster, a very learned

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[1] Powell *v.* Gudgeon, 5 M. and S. 431; Sarguy *v.* Hobson, 2 B. and C. 7.
[2] Benson *v.* Duncan, 4 W. H. and G. 644. [3] In Roux *v.* Salvador, 3 Bing. *n. c.* 278.
[4] *Per* Lord Stowell, in *The Gratitudine, ut sup.*
[5] *Per* Bayley, J., in Freeman *v.* E. I. Co., 5 B. and A. 617.
[6] Morris *v.* Robinson, 3 B. and C. 196.

judge has said:—"*A captain has no power to sell unless from necessity*, considered as an impulse, acting morally, to excuse his departure from the original duty cast upon him of navigating and bringing back the vessel."[1] It has been held, therefore, that a sale abroad by the captain, without consent of the owner, can only be justified by proof of pressing necessity;[2] and it will be such a case of necessity, if the ship, being in a foreign port, cannot be sent upon her voyage without repairs, and these cannot be done unless at so great and so certain a loss, that no prudent man would incur,—which necessity the first purchaser must be able to prove.[3] Before selling, however, the captain is bound, if practicable, to communicate with his owner; and it is his duty also to consult the British consul there;[4] and if it be fairly proved that the repairs were indispensably necessary,—that no money could be raised on bottomry or otherwise,—that the best advice was adopted,—and that the sale was fairly and honestly conducted, and all the requisites of the law complied with,—the sale will be held effectual.[5]

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[1] *Per* Tindal, C.J., in Soames *v.* Sugrue, 4 C. and P. 276.
[2] *The Margaret Mitchell*, 1 Swabey, 382.
[3] *The Australia*, 1 Swabey, 480.
[4] *The Bomba*, 1 Lushington, 252.
[5] *The Margaret Mitchell*, 4 Jur. *n. s.* 1193.

IX.—GENERAL AVERAGE

A general average loss is that which has been sustained *by the sacrifice of some part of the ship or cargo for the safety and preservation of the whole;* and this loss is made good to the party upon whom it falls, by an average contribution upon all, termed a general, gross, or extraordinary contribution, upon the amount of the ship, cargo, and freight. This rule has been adopted, in all modern systems of maritime jurisprudence, from the famous Rhodian law, "*Concerning throwing overboard,*" by which it is provided, that "if, for the sake of lightening the ship, a throwing overboard of the merchandise be made, what is given for all must be made good by the contribution of all."[1]

In order to render such a loss the subject of a general average contribution, it must have been done, or incurred, or the sacrifice made,—*not suffered,*—intentionally by the mind and agency of man, and with that degree of premeditation and deliberation which the exigencies of the circumstances admit of in such cases of extreme danger;[2] and, therefore, if the damage or loss arises by the winds or waves, or from the ordinary perils in the course of the voyage, or if part of the goods be washed overboard by the violence of the waves, or damaged in a storm, there is no general contribution for such loss or damage.[3] The sacrifice *must* be made, or become indispensable, for the safety of the whole, and the ship and rest of the cargo must, in fact, be saved thereby; and, therefore, if goods are thrown overboard in a storm, for the purpose of lightening the ship, and afterwards the ship is lost in the same storm, there is no general contribution; although, if the ship survive that storm, and, continuing her course, is afterwards lost, the property saved from the last accident contributes to the former loss, as having, at one period of the voyage, owed their preservation to it.[4] In imminent danger, the captain has authority to make such a sacrifice; but he must show a proper necessity for the exercise of this authority, and he is responsible for the due exercise of his judgment. The crew, however, cannot, at their own hand, throw overboard any part of the cargo without the authority of the captain, who ought, when practicable, to consult with his officers and crew, or with the supercargo, where there is one on board.[5]

The goods thrown overboard still belong to the former owners, and do not belong to the finders as if they had been derelict. and these can be reclaimed by the original owners upon payment of salvage to the finders.[6]

This general average also extends to those parts of the ship, or her appurtenances, which have been cut away or sacrificed for the common good. As where, in order to facilitate the throwing overboard, the decks or sides of the ship are voluntarily cut or damaged, or the vessel is run on shore in order to avoid a storm, or where masts are necessarily cut, cables cut, or anchors slipped or abandoned, or part of the rigging or furniture sacrificed, for the general safety,—the loss occasioned by such sacrifices also falls under the general contribution.[7]

If the ship survive the storm, or the dangers which rendered the sacri-

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[1] Dig., lib. xiv. tit. 2, sec. 1. [2] Abbot, 361. [3] Mar. 425; 2 Arn. 889, 906.
[4] Mar. 426. [5] 2 Arn. 885. [6] 2 Arn. 890. [7] Mar. 424.

fice necessary, the captain must, on arrival at the nearest port, or, at all events, immediately on arrival at his port of destination, make a regular protest, in which will be inserted the whole particulars of the jettison entered in the log-book, as soon after it as possible; and, along with two or more of his crew, he must make oath that the goods were thrown overboard, or the loss incurred, for the safety of the ship and rest of the cargo, and for the preservation of the lives of those on board, and for no other cause.[1]

In treating of general average, there must be considered—1. The sacrifices or losses which fall under a general average; 2. The articles upon which the contribution falls; 3. The mode of contribution.

I.—SACRIFICES OR LOSSES, GENERAL AVERAGE.

Keeping in view the principle that "general average is for a loss incurred, towards which the whole concern is bound to contribute proportionally, because it was undergone for the general benefit and preservation of the whole, and to which contribution must be made by both ship and cargo,—the loss, or the expense which the loss creates, being incurred for the common benefit of both."[2] And the freight then earning, having been put in hazard, but is saved and finally earned, forms also a part contributory to the general average.[3] The following are held to be subjects of general average contribution:—

1. Where some part of the cargo has been advisedly thrown overboard, or the masts, rigging, boat, &c., sacrificed (destroyed) for the general safety while the vessel was in distress, or damage done to the ship or cargo by cutting her sides or deck, to effect or facilitate the overthrow.[4]

2. Loss sustained by running on a shallow, or on shore, for the purpose of avoiding an enemy, or dangerous rocks on which the vessel is driving in a storm, when this is done for the safety and preservation of the whole.[5]

3. If cables are cut from the anchor, or masts, sails, boats, or rigging are cut away to lighten and preserve the ship and cargo when in imminent danger, and when the general safety requires the sacrifice.[6]

4. When anchors are abandoned or slipped from, cables cut, or sails, tackle, or furniture, deliberately let go to right the vessel,—to avoid being run on shore, or upon rocks, or being run foul of by another vessel, or, when on shore or run foul of, getting clear,—such damage must be made good by general contribution.[7]

5. When in danger of storm or capture, or of drifting on a lee-shore, the captain, for the *preservation of the ship and cargo*, advisedly runs his ship on a rock, shallow, or strand, and the vessel is afterwards got off,—the damage thus voluntarily done (it may be both to ship and cargo),—the value of any goods thrown overboard in order to enable her to float,—and the expense of unlading and relading the ship, where such was necessary,—must be made up by general average contribution.[8] But this claim for a general average contribution only arises where part of the cargo has been

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1 Mar. 433; Abbot, 362. 2 *Per* Sir W. Scott, in *The Copenhagen*, 1 Rob. A. R. 293.
3 Williams *v.* Lond. Ass. Soc., 1 M. and S. 324. 4 Mar. 430; 2 Arn. 884, 893.
5 2 Arn. 893. 6 Abbot, 365.
7 Birkley *v.* Presgrave, 1 East, 220; Plummer *v.* Wildman, 3 M. and S. 482.
8 1 Park, 825; 2 Arn. 898.

sacrificed for the preservation of the whole from an imminent danger, but not where a part of the cargo has been *sold* in order to raise money at a port to which the ship has put back, for the purpose of repairing damage from the *ordinary perils* of the sea,—the damage itself not being a subject of general average contribution.[1] And where a ship, in a storm, was driven on a bank near her port of loading, and the cargo was recovered from her and carried to that port, and there warehoused, while the ship still remained on the bank in a perilous situation; but the ship was got off some days after, and taken back to port and repaired, and having again taken the cargo on board, proceeded on her voyage:—it was held, that, as the whole saving of the cargo and ship was one continued transaction, the expenses were general average, to which ship, cargo, and freight must contribute.[2]

6. If, in order to lighten the ship in an extraordinary or impending danger,—in order to save her from foundering,—to float her when stranded,—to enter a port in distress,—to cross a bar, or to sail up a river,—part of the cargo is put into boats or lighters, and is lost,—this loss is a general average contribution:—but, if the ship and the remaining part of the cargo be subsequently lost, and the goods in the lighters saved, the latter do not contribute to the loss of the former.[3]

7. When a vessel, in the course of her voyage, receives an accident, which is itself the subject of an average contribution, and to repair which, so as to enable her to prosecute her voyage, she must put into a port of distress for the safety of the whole concern,—all the expense of doing so, the expense of unloading, taking care of or warehousing, and of reloading the cargo, where absolutely necessary for the purpose of the repairs, and when such are necessary for the safety of the ship and cargo, are subjects of general average.[4]

8. The hire of extra assistance to preserve and secure ship and cargo, under circumstances of an extraordinary nature, and when both are placed in danger; and the hire of extra hands to keep the ship free from water, so as not to damage the cargo, where that has not been occasioned by the unseaworthiness of the ship.[5]

9. When a ship is stranded, and in danger of being lost, the expense of discharging the cargo, or part of it, in order to lighten her,—of endeavouring to float her off with her cargo aboard,—when such expense is incurred for the joint benefit of ship and cargo, it falls under a general average contribution.[6]

10. Where, in the performance of the throwing overboard, other goods are damaged by the sea-water, or are washed out,—these also form part of the general average loss; and where water is thrown down the hatches to extinguish a fire, and other goods are thereby damaged, the loss thus sustained is included in the general average.[7]

11. When the damages sustained by the ship were an average loss, and a return to port was necessary for the general safety of the whole concern, the expenses unavoidably incurred in returning to port, and repairing these damages, so far as confined to what is absolutely necessary to enable the

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[1] Hallet *v.* Wigram, S. M. G. and S. 580. [2] Moran *v.* Jones, 7 El. and Bl. 523.
[3] Mar. 426; 2 Arn. 889. [4] *The Copenhagen*, 1 Rob. 289; Plummer, *ut sup.*
[5] 2 Arn. 914; Birkley, *ut sup.* [6] 2 Arn. 915.
[7] Benecke Princs. of Indemnity, 213, 243.

ship to proceed with her cargo to her destination, and no more, form a general average claim.[1] Where the repairs are of this description, the better principle seems to be, that the "necessary expenses of port charges, wages, and provisions, during the stay in the port of repair," form also part of the general average.[2]

12. Where the captain, in a foreign port, and having no other means of paying for expenses of repairs which themselves form a general average claim, sells part of the cargo for the express purpose of defraying these, the loss thence arising forms the proper subject of a general average claim.[3]

The following are not subjects of general average, but of simple or special average, incurred by or for one part of the concern, and which that part alone must bear :—

1. The loss of an anchor or cable, the starting of a plank, &c.; for which the ship alone is liable.[4]

2. If sails are blown away or masts or cables broken by the violence of the wind or in a storm,—slipping from anchors and chains in such a case, —when a chain or anchor becomes foul, and is slipped from,—or when a chain is broken in tempestuous weather,—these several losses are not allowable in general average.[5]

3. When damage is done to a ship and tackle, in consequence of her labouring in a heavy and dangerous sea, which compels the master, for the ship's safety, to go into a port to refit,—the expense of these repairs, and of the wages and provisions of her crew during her detention there, are not allowed as general average.[6]

4. Where a vessel sprang a leak, and had to return to a port to be repaired, for doing which it was necessary to unload the cargo, and, after repair, to re-ship it,—neither the expense of the repair, the maintenance of the crew, nor the other expenses occasioned by the necessity of the repair, were matters of general average.[7]

5. If the vessel puts into port merely from stress of weather, though this may be a prudent act, and for the benefit of all, yet, as there was no sacrifice on the part of the ship for the benefit of the whole, the expenses thereby incurred must fall upon the shipowner alone.[8]

6. When the captain has been obliged to sell part of the cargo, for the purpose of paying for repairs to the ship made necessary by the ordinary perils of the sea,—this also falls upon the shipowner.[9]

7. When the ship can be repaired as well with the cargo on board as though it were unladen,—if the cargo be unladen merely in order to preserve it, the expense thus caused will not be a general average claim; but it may be general average if it were necessary in order to repair the ship and preserve the cargo. And the expense of removing the ship's stores, *after* the cargo is out, gives no such claim, being an expense incurred for the safety of the ship only.[10]

8. Where the vessel arrives at an intermediate port in so disabled a state that it becomes necessary to unload the cargo, as well for the indispensable repair of the ship as for its own preservation, to which port a proportional

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1 Plummer *v.* Wildman, 3 M. and S. 483.
2 Abbot, 379; 2 Arn. 911.
3 Abbot, 380; 2 Arn. 893.
4 *The Copenhagen*, 1 Rob. 293.
5 Abbot, 365; 2 Arn. 894.
6 Power *v.* Whitmore, 4 M. and S. 141.
7 Jackson *v.* Charnock, 8 T. R. 209.
8 1 Park, 291.
9 Hallet *v.* Wigram, *ut sup.*
10 2 Arn. 905.

portion of the freight is paid, and the cargo is transhipped,—the expense of unloading, transhipping, and conveying the cargo to its ultimate destination belongs to the cargo only, and for the expense of the repairs the cargo is in no respect answerable.[1]

9. The captain's expenses at such port, during the unloading, repairing, and reloading, and crimpage paid for supplying deserters, are not allowed as general average;[2] and an extra allowance promised by the captain to the sailors in the time of danger, as an inducement to them to make unusual exertions, cannot be an item of a general average.[3]

10. The wages and provisions of the crew, while the ship is detained at a foreign port under an embargo, give no claim to a general average; nor, while the vessel is detained waiting for convoy, or when frozen up in any port in the ordinary course of the voyage.[4]

11. If, in the course of the voyage, the ship is driven, by stress of weather, upon a rock, shallow, or strand, and is irrecoverably stranded, but the cargo can be unloaded without her floating,—the ship does not contribute to the expense of unloading the cargo, nor the cargo to the expense of subsequently recovering the ship.[5]

12. The expense of repairing damage accidentally sustained by the ship *from the perils of the sea* in the course of the voyage, as already seen, falls upon the shipowner alone.[6]

13. If, in the usual course of navigation, the cargo has to be conveyed from the ship to the port of destination in boats or lighters, and should any of these, when laden, be lost, the loss gives no claim to a general average contribution; but if these goods be landed safe, and the ship and the rest of the cargo on board be lost, the former does not contribute to the latter.[7]

14. When the ship receives damage in the course of the voyage, and is repaired at an intermediate port, or at the port of destination, but the captain has no money, or means of raising money, to pay for these *necessary repairs*, unless by a sale of part of the cargo, the loss incurred by such sale is not made good by a general average contribution, but must be made good by the owner of the ship alone, to the owner of the goods so sold.[8]

15. When a ship puts into a port in the course of her voyage, in consequence of contrary winds, or from the want of water or provisions, and in order to procure a supply of these,—the expenses thereby occasioned fall upon the shipowner alone.[9]

16. As goods carried on deck tend to embarrass the navigation of the ship, they, if thrown overboard, have no claim to contribution, unless they are so carried according to the common and uniform usage of the trade on the voyage for which they are so shipped,[10]—such as carboys of vitriol carefully stowed on deck, being the usual place for these;[11] timber laden on deck, according to the custom of a particular trade;[12] and pigs carried on deck on a voyage between Waterford and London;[13] these, being thrown overboard, have been contributed for, the usage of the trade being proved.

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1 *The Copenhagen, ut sup.*
2 Plummer, *ut sup.*
3 1 Park, 282.
4 1 Park, 287; 2 Arn. 913, 914.
5 2 Arn. 915.
6 2 Arn. 906.
7 Abbot, 363; 1 Park, 283.
8 Powell *v.* Gudgeon, 5 M. and S. 431; Hallet, *ut sup.*
9 Ben. 192; Stevens on Average, 23.
10 Abbot, 366 *et seq.* and note.
11 Da Costa *v.* Edmunds, 4 Camp. 142.
12 Gould *v.* Oliver, 4 Bing. *n. c.* 134.
13 Millward *v.* Hibbert, 3 Q. B. 120.

II.—ON WHAT THE CONTRIBUTION FALLS.

The general rule is, that whatever is on board as cargo, the ship, and the freight, must bear an equal and proportional part of the contribution, for what was sacrificed for the common good.[1]

1. THE CARGO.—All goods and wares laden on board the ship for the purposes of traffic and merchandise, of whatever kind, value, or weight, contribute. Deck goods contribute, though, if thrown overboard, they would not be contributed for, unless so carried according to the usage of trade; even gold, silver, precious stones, and other small articles of value, when carried as part of the cargo, also contribute. The goods thrown overboard, and goods previously sacrificed for the general benefit, contribute to the general average equally with the goods saved, and so do also goods belonging to Government.[2]

But, as the general rule is, that "what pays no freight pays no average," the wearing apparel, personal jewels, and other articles belonging to the passengers and crew, or in their chests and boxes, and the persons of the passengers and crew, and the provisions and stores, do not contribute. The wages of the sailors are also exempt from contribution, and so are bonds of bottomry and respondentia, and warlike stores on board for the use of the ship.[3] Goods thrown overboard do not contribute to any *after* overthrow, nor do goods taken on board after an overthrow.[4] When part of the cargo has been necessarily sold at an intermediate port of distress, and at a price higher than it would have brought at the port of destination, in a question of general average, the actual value of the goods so sold, and not their value at the port of destination, is the value to be taken into the contribution.[5]

2. THE SHIP.—The general rule is, that the contribution is to be made on the value of the ship as she is worth to the owners when she arrives,[6] —that is, the value of the hull, masts, sails, yards, rigging, &c., according as the same may be valued at the port of discharge;[7] and if any part of the ship or furniture has been sacrificed, *the value* of that part must be added;[8] but the victuals and ammunition of the ship do not contribute.[9]

3. THE FREIGHT.—This is the actual sum finally received as freight by the owners, under deduction of all the expenses of earning that freight,—viz., seamen's wages, light and port dues, pilotage, and all the other charges denominated *petty averages*, of which the cargo bears two-thirds, and the ship one-third.[10] A ship was chartered for one entire voyage out and home, the freight to be payable on condition that the ship performed her voyage, and arrived at her home port of departure in safety, but not otherwise, and an insurance was effected on the ship for the outward voyage; and, in the course of this voyage, a general average loss was incurred; —the ship was repaired,—arrived at her home port of departure, and earned full freight; and the owner brought his action against the underwriters on the ship, for a rateable proportion of the contribution laid on him *as shipowner*, in respect of the general average loss on the outward

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1 Abbot, 383; Mar. 482; 1 Park, 294.
2 Abbot, 384; Mar. 432; 2 Arn. 918, 919.
3 1 Park, 293; 2 Arn. 919.
4 Ben. 182, 306.
5 Richardson *v.* Nourse, 3 B. and A. 237.
6 2 Arn. 934.
7 Mar. 434.
8 Arn. 936.
9 Abbot, 384.
10 Mar. 434.

voyage; the underwriters claimed deduction of the sum due to them (as in place of the shipowner), as the amount of the contribution upon the whole freight payable under the charter-party, and ultimately earned;—the court held, that such freight was liable to contribute for the general average incurred on the outward voyage, on the ground that the whole freight payable under the charter-party was one entire and indivisible sum payable for the use of the ship out and home; and that, having been put to hazard, and saved by the measures taken for the general benefit, the freight ultimately earned ought to contribute.[1]

As the freight of the goods thrown overboard, or sold for the general benefit, is made up to the shipowner by the general average contribution, such freight also contributes; and the *nett* freight ultimately earned, after the wages and the other charges of earning have been deducted, is the contributory value of freight to the general average.[2]

III.—ADJUSTMENT OF CONTRIBUTORY VALUE.

It is the universal rule of all maritime nations, that the adjustment of a general average contribution should, if possible, be made at the ship's port of discharge or delivery, as soon as possibly can be after the ship's arrival there.[3]

The contributory value of the goods is their *nett* market price at the port of adjustment, free of all charges for freight, duties, and landing; and the value of goods thrown overboard, ascertained in the same manner, and under the same deductions, is added to the value of the cargo saved.[4] If, in consequence of an average loss sustained at the commencement of the voyage, the ship puts back to her port of lading, and the adjustment takes place there, the goods are taken at the invoice prices and shipping charges, but no insurance charges are allowed; and if the vessel has stopped at an intermediate port, unable to complete her voyage, and there are no means of sending the cargo on to its destination, it ought to be taken at the nett market value, or the price it actually sells for, less charges.[5] If the captain has sold part of the cargo at an intermediate port of distress, at a higher price than it would have brought at the port of delivery, the actual value of the goods so sold must be taken, and not the price they would have brought at the port of delivery.[6]

The value of the ship is taken as at the port of delivery; and if damage has been done to the ship, which has been repaired, the established rule is, to deduct one-third from the whole expense, both of labour and materials, and to make the contribution on the remaining two-thirds. If the ship is on her first voyage, this rule does not apply,—and a first voyage is held to be that on which a new ship, after she has been duly registered, leaves her port of registry *on a voyage* for the first time, with the intention of returning to that port, until she comes back to it again from that voyage; but where new materials, as masts, sails, rigging, &c., have been added to an old ship, and the loss falls chiefly on these, the former rule of the two-thirds applies.[7] The same rule holds in regard to repairs done

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[1] Williams *v.* Lond. Ass. Co., 1 M. and S. 318.
[2] 2 Arn. 939.
[3] Mar. 435; 1 Park, 298.
[4] 2 Arn. 733; 1 Park, 297.
[5] 1 Arn. 404.
[6] Richardson *v.* Nourse, *ut sup.*
[7] Poingdestre *v.* Ro. Ex. Ass. Co., R. and M. 378; Pirie *v.* Steel, 8 C. and P. 200.

in a foreign port of distress; but anchors replaced are not subject to any such deduction; and chain-cables suffer a deduction of one-sixth.[1]

The freight is the clear amount of the earnings of the voyage, under the deductions before mentioned;[2] and if an adjustment has been made at the foreign port of destination, or at any foreign port where it ought properly to have been settled, it will be conclusive, though the apportionment upon the several contributory interests be different from what it would have been had it been adjusted in a home port.

Thus, where an adjustment was settled at St. Petersburg, under which the British merchant had, in order to obtain his goods, been obliged to contribute to expenses which are general averages in Russia, but not in this country:—it was held, that he could not recover back the money so paid, though both parties were British subjects, and the vessel a British vessel.[3] And the same decision was given also upon a Russian adjustment, where there was contribution for wages and provisions during a refitment, which are not general average in this country.[4]

So, also, where the holder of a bond of respondentia on a Danish ship had been obliged to pay a contribution, under a foreign adjustment settled in Denmark, and enforced by a judgment of the Court of Copenhagen, though such bond is not liable to general average in this country,—in an action against the English underwriter for the sum so paid, the latter was held liable.[5] And where the assured on goods had been compelled to pay, by order of court, under a foreign adjustment settled at Pisa, an account of losses, some of which would not have been general average losses in this country, and upon contributory values computed differently from what they would have been here,—this being clearly proved to be the usage of that place, the underwriter was held liable.[6]

But, if no sufficient evidence is given that the adjustment has been made according to the laws and usage of the foreign port of adjustment, the underwriter will not be bound:—as, where the owner of goods insured from London to Lisbon, under an adjustment settled in Lisbon, was compelled, by a decree of the court there, to pay a contribution for losses, which, by the law of this country, do not form general average,—no sufficient proof being given that, by the laws and usages of Lisbon, such losses were treated as general average there:—it was held, that the owner of the goods could not recover from his underwriter his proportional amount of the sum so paid, and that a recital in the decree of the foreign tribunal, by which that average had been settled, was not sufficient evidence of the law and usage of that foreign port.[7]

The captain or owners have a lien over the goods for the average contributions, and these, therefore, should be adjusted and settled before the cargo is landed, or at least delivered.[8] Usually the adjustment is made by the broker, or the documents and vouchers are placed in the hands of a professional average adjuster to prepare an average statement, by which the proportions payable by the different parties are fixed, and these parties enter into an average bond for payment of the proportions so fixed.

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[1] 2 Arn. 984. [2] 2 Arn. 939. [3] Simmonds *v.* White, 2 B. and C. 803.
[4] Dalgleish *v.* Davidson, 5 D. and R. 6. [5] Walpole *v.* Ewer, 2 Park, 898.
[6] Newman *v.* Cazalet, 2 Park, 900. [7] Power *v.* Whitmore, 4 M. and S. 141.
[8] Mar. 433; 2 Arn. 949.

The consignee, if owner of the goods, is liable to pay his share of an average contribution; but if the consignee receives the goods under a bill of lading, "he paying freight and demurrage," and the captain delivers the goods to the consignee, without mentioning the general average, and without exercising his lien for it, the consignee is not bound to pay.[1]

[1] Scaife *v.* Tobin, 3 B. and A 523.

X.—RESPONSIBILITY OF OWNERS.

By section 503 of the Merchant Shipping Act, it is enacted, that no owner of any seagoing ship, or share therein, shall be liable to make good, to any extent whatever, any loss or damage that may happen, without his actual fault or privity, of or to any of the following things, viz.:—1. Of or to any goods, merchandise, or other things whatsoever, taken in or put on board any such ship, by reason of *any fire* happening on board such ship: 2. Of or to any gold, silver, diamonds, watches, jewels, or precious stones, taken in or on board any such ship, by reason of *any robbery, embezzlement, making away with, or secreting thereof*, unless the owner or shipper thereof has, at the time of shipping the same, inserted in his bills of lading, or otherwise declared in writing to the captain or owner of such ship, the true nature and value of such articles.

Nor are the owners of any ship, whether British or foreign, answerable in damages in cases where all or any of the after-mentioned events occur, without their actual fault or privity:—in respect of loss of life or personal injury, either alone or together, with loss or damage to ship, boats, goods, merchandise, or other things, to an aggregate (collected) amount exceeding £15 for each ton of their ship's tonnage; nor in regard of loss or damage to ship, goods, merchandise, or other things, whether, in addition, there be loss of life or personal injury or not, to an aggregate amount exceeding £8 for each ton of the ship's tonnage,—the tonnage, in the case of sailing ships, being the registered tonnage,—and, in the case of steam-ships, the gross tonnage, without deduction for the space occupied by the engine-room:[1]—viz.,

1. Where any loss of life or personal injury is caused to any person being carried in such ship.

2. Where any loss or damage is caused to any goods, merchandise, or any other things on board such ship.

3. Where any loss of life or personal injury is caused, by the improper navigation of such ship, to any person carried in *any other* ship or boat.

4. Where any loss or damage is caused, by the improper navigation of such ship, to any other ship or boat, or to any goods, merchandise, or any other thing on board any other ship or boat.

If any foreign ship has been or can be measured, according to British law, the tonnage thus ascertained is held, for the said purposes, to be the tonnage of that ship; but if the foreign ship has not been and cannot be measured under British law,—on receiving such evidence as to the dimensions of the ship as can be given, the surveyor-general of tonnage in the United Kingdom, and the chief measuring officer in a British possession abroad, have to state, in a certificate under his hand, what would be, in his opinion, the tonnage of that ship, had she been measured according to British law; and the tonnage thus stated is to be held, for the foresaid purposes, the tonnage of the ship.[2]

Insurances against any or all of the events now enumerated, and happening without the owner's actual fault or privity, are not void and null *because of the nature of the risk.*[3]

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[1] 25 and 26 Vict., cap. 63, sec. 54. [2] Ibid. [3] Sec. 55.

The owner of every seagoing ship or share therein is liable in respect of every such loss of life, personal injury, loss of or damage to goods as aforesaid, arising on distinct occasions, to the same extent as if no other loss, injury, or damage had arisen.[1]

In any proceeding under this section of the Merchant Shipping or any Amended Act against the owner or part-owner of a ship, on account of loss of life,—the "Master's List," or the custom's officer's copy thereof, delivered in terms of section 16 of "The Passengers Act," 18 and 19 Vict., cap. 119, is sufficient proof, in absence of contrary proof, that the persons alleged to be dead were, at the time of their deaths, passengers on board.[2]

Whenever any liability as aforesaid has been, or is alleged to have been, incurred, in respect of loss of life or personal injury, the Board of Trade can, in its discretion, and after giving not less than three days' notice, by post or otherwise, to the party to be made defendant or defender,—by warrant sealed with the seal of the Board, or signed by one of the secretaries, require the sheriff having jurisdiction over any place in the United Kingdom to summon a jury, for the purpose of determining the following question:—viz., the number, names, and descriptions of all persons killed or injured, by reason of any wrongful act, neglect, or default. And, upon receipt of this warrant, the sheriff must summon a jury of twenty-four indifferent persons, duly qualified to act as common jurymen in the supreme courts, to meet at such time and place as shall be specified.[3]

If either party to the inquiry desires this question to be tried before a special jury, the question must be so tried, provided that notice of such desire, if coming from the other party, is given to the Board of Trade before it has issued its warrant to the sheriff. For that purpose, the Board of Trade, by its warrant to the sheriff, requires him to nominate a special jury for such trial; and, as soon as conveniently may be after the receipt by him of such warrant, the sheriff summons both parties to appear before him, by themselves or their attorneys or agents, at some convenient time and place, for the purpose of nominating a special jury; and, at the time and place so appointed, the sheriff proceeds to nominate and strike a special jury, in the manner in which such juries are required, by the laws for the time being in force, to be nominated or struck by the proper officers of the superior courts. And the sheriff appoints a day, and, on the day so appointed, the sheriff proceeds to reduce the special jury to the number of twenty, in the manner used and accustomed by the proper officers of the superior courts.[4]

The following provisions apply to the proceedings by the Board of Trade:—

1. The sheriff presides at such inquiry, and the Board of Trade is held, in England and Ireland, to be the plaintiff, and, in Scotland, the pursuer, with power to appoint any agent to act on its behalf, and the Board has all such rights and privileges as the plaintiff or pursuer is entitled to in actions at law, and the owner or owners of the ship or ships, by whom such liability as above mentioned is alleged to have been incurred, are held, in England and Ireland, to be the defendants, and, in Scotland, the defenders.

[1] 17 and 18 Vict., cap. 101, sec. 506.
[2] 25 and 26 Vict., cap. 63, sec. 56.
[3] Sec. 507.
[4] Sec. 508.

2. Not less than ten days' notice of the time and place of the inquiry must be served by the Board on the defendant.

3. Service on the captain of any ship is held to be good service on the owner thereof, and in respect of the proceedings in such inquiry, the master is held the agent and representative of the owner, with power to appear for him on such inquiry, and to do all matters and things which he himself might have done.

4. If the defendant does not appear at the time of such inquiry, it is proceeded with as if he had appeared, upon due proof of service of notice having been made on him, in pursuance of the Act.

5. The impannelling of the jury, and the summoning and attendance of the witnesses, are conducted and enforced, in England and Ireland, in manner provided by the Lands Clauses Consolidation Act, 1845, in cases of disputed compensation as to land, and in Scotland, by the Lands Clauses Consolidation (Scotland) Act, 1845, in like cases, or as near thereto as circumstances permit; and all provisions in these acts, having reference to cases where any question of disputed compensation requires to be determined by the verdict of a jury, are, with the requisite alterations, considered as incorporated with the Merchant Shipping Act, and to have reference to cases where the question of liability of any owner, in respect of any such accident as aforesaid, requires to be determined by the verdict of a jury.

6. In England and Ireland, if the Board of Trade so requires, or if the defendant so requires, and the Board consents thereto, the sheriff appoints as assessor a barrister-at-law of competent knowledge and standing.

7. The costs incurred by all parties in and incidental to any such inquiry are, in England and Ireland, taxed by the master of any of Her Majesty's superior courts of common law, as between attorney and client, and in Scotland, by the auditor of the Court of Session, as between agent and client: and if the verdict in any inquiry is in favour of the plaintiff, these costs are to be paid by the defendant, but if the verdict is in favour of the defendant, by the Board of Trade, out of the Mercantile Marine Fund.

8. The payment of all damages and costs in any such inquiry can, upon application made to any superior court as aforesaid by the party entitled thereto, be enforced by a rule or order of that court, or a judge thereof, or otherwise as the court or judge direct.

9. The Board may make any compromise it thinks fit, as to the damages payable in respect of personal injury, or of the death of any person; and any damages received in pursuance of such compromise are to be applied, so far as the same extend, in the same manner and subject to the same rules as if the sums were damages recovered on an inquiry instituted by the Board.[1]

The following rules have to be observed as to the damages recovered in any such inquiry, and the application thereof:—

1. The damages payable in each case of death or injury must be assessed at £30.

2. The damages found due in any such inquiry must be the first

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[1] Sec. 509.

charge on the aggregate amount for which the owner is liable, and must be paid out of that amount, in priority to all other claims.

3. All such damages must be paid to Her Majesty's Paymaster-General, and distributed and dealt with by him as the Board directs: and in directing such distribution, the Board has power, in the first place, to deduct and retain any costs incidental thereto; and in the next place, as regards the sums paid in respect of injuries, to direct payment to each person injured, of such compensation, not exceeding in any case the statutory amount, as the Board thinks fit; and as regards the sums paid in respect of deaths, to direct payment thereof for the benefit of the husband, wife, parent, and child of the deceased, or any of them, in such shares, upon such evidence, and in such manner as the Board thinks fit.

4. The Board refunds to the owner any surplus remaining under its control, after making much distribution as aforesaid, and the sum so refunded forms part of the residue as after mentioned.

5. The Board, or any person acting under it, is not liable to any action, suit, account, claim, or demand whatsoever, for or in respect of any act or matter done, or omitted to be done, in the distribution of such damages.

6. If the amount paid to Her Majesty's Paymaster-General, as aforesaid, is insufficient to meet the demands upon it, the several claims thereon must abate (be lessened) proportionally.[1]

If, after completing an inquiry as aforesaid, any person injured values the damages payable in respect of such injury,—or if the executor or administrator of any deceased person values the damages payable in respect of his death,—at a greater sum than the above statutory amount,—or, in case of a compromise having been made by the Board, than the amount accepted by the Board by way of compensation for such injury or death,—the person so valuing the same, upon repaying or obtaining repayment by the Board to the owner of the amount paid by him to the Board in respect of such injury or death, is at liberty to bring an action for the recovery of damages, in the same manner as if no power of instituting an inquiry, as before mentioned, had been given to the Board;—subject to this proviso,—that any damages recoverable by such person are payable only out of the residue, if any, of the aggregate amount for which the owner is liable, after deducting all sums paid to the Paymaster-General in manner aforesaid; and if the damages recovered in said action do not exceed double the statutory amount, that person pays to the defendants in such action all the costs thereof, taxed in England and Ireland as between attorney and client, and in Scotland as between agent and client.[2]

In cases where loss of life or personal injury has occurred by any accident, for which the owner of a ship is, or is alleged to be, liable in damages, no person is entitled to bring any action, or institute any suit or other legal proceeding in the United Kingdom, until the completion of the inquiry (if any) instituted by the Board of Trade, or until the Board has declined to institute the same; and for the purpose of entitling any person to bring an action, &c., the Board is deemed to have refused to institute such inquiry, whenever notice has been served on it by any person of his desire to bring such action, or institute such suit, &c., and no inquiry is instituted by the Board in respect of the

[1] Sec. 510. [2] Sec. 511.

subject-matter of such intended action, &c., for the space of one month after the service of such notice.[1]

When the Board of Trade, having refused in manner aforesaid to institute any inquiry, afterwards determines to institute the same, the damages and costs (if any) recovered on such inquiry are payable rateably with, and not in priority to, the costs and damages recovered in any other action, suit, or other legal proceeding.[2]

In cases where any liability has been, or is alleged to have been, incurred by any owner, in respect of loss of life or personal injury, or loss of or damage to ships, boats, or goods,—and several claims are made, or expected to be made, in respect of such liability,—then, subject to the right before given to the Board of Trade of recovering damages in the United Kingdom in respect of loss of life or personal injury, it is lawful, in England or Ireland, for the Court of Chancery,—in Scotland, for the Court of Session,—and in any British possession, for any competent court, to allow proceedings at the instance of any owner, for the purpose of determining the amount of that liability, subject as aforesaid, and for the distribution of that amount rateably among the several claimants, with power for any such court to stop all actions and suits pending in any other court, in relation to the same subject-matter; and any proceeding entertained by the Court of Chancery, or Court of Session, or other competent court, is conducted in such manner, and subject to such regulations as to making any interested persons parties to the same, and as to the exclusion of any claimants who do not come in within a certain time, and as to requiring security from the owner, and as to payment of costs, as the court thinks fit.[3]

When a shipowner has, under this section, brought his action for settling the amount of his liability for loss, &c., as above mentioned, and to have that amount apportioned among the several claimants thereof,—there being no opposing litigation among the claimants themselves, nor any other special circumstances causing an increase of expenses, and over which he has no control,—the shipowner, as the party relieved by the proceedings, has to pay the whole expenses of all the claimants whose claims have been sustained, and also the expenses of actions commenced by any of them.[4] A claimant, who has obtained a final judgment of the Court of Admiralty condemning the ship, is only entitled to share proportionally, according to the loss he has sustained, with other claimants in the value of the ship and freight; but the shipowner is entitled to an injunction (an order of court) prohibiting the claimant who has obtained such a judgment from proceeding further in the Court of Admiralty;[5] and, in a proceeding by the shipowner under this section, to put a stop to actions in other courts, for having ascertained the damages suffered by a collision with his ship,—he must be able truly to state that he has incurred liability for *some* damage.[6]

All sums of money paid for or on account of any loss or damage, in respect whereof the liability of an owner is limited by this part of the Merchant Shipping Act, and all costs incurred in relation thereto, can be taken

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[1] Sec. 512. [2] Sec. 513. [3] Sec. 514.
[4] African Steam-Shipping Company *v.* Swanzy, 25 L. J. 870.
[5] Leycester *v.* Logan, 26 L. J. 306. [6] Hill *v.* Audus, 24 L. J. 229.

into account among part-owners as money disbursed (laid out) for the use of their ship.[1]

But nothing in this part of the Merchant Shipping Act can be construed to lessen or take away any liability to which any *master* or *seaman*, being also owner or part-owner of the ship to which he belongs, is subject in his capacity of master or seaman; or to extend to any British ship, not being a recognised (*i.e.*, a duly registered) British ship within the meaning of the Act.[2]

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[1] Sec. 515. [2] Sec. 516.

WEST BENGAL SECRETARIAT LIBRARY.

XI.—NEUTRALITY.

"Neutral nations or peoples," says Vattel, "in a war, are those who do not take any side,—remaining common friends of the two parties, and not assisting or befriending the arms of the one to the detriment of the other."[1] Or, as said by another, "That exact continuation of the pacific state of one power, who, when a war breaks out between two or more nations, wholly refrains from taking part in their quarrels and disputes."[2] And, as another writes:—"Impartiality (equity and justice) is a duty of neutrality;" "the neuter ought to maintain in the matters which have relation to the war, not an impartiality of action, but an impartiality of *inaction*,—doing nothing."[3]

It has been well said, that "the actions of one people cannot have any obligatory power, nor even any influence, over the others." "The necessary and certain consequences which follow from the neutrality and from the principle which forms its foundation are these:—The war unexpected between two peoples does not vary in anything the state of the neuter; it remains in possession of its perfect independence, as if peace had continued to exist. In regard to it, by the original right of nations, nothing is changed: it has the same rights, in the same degree; in one word, to it the war is foreign, as likewise all that which proceeds from it. It may not, it ought not, from hence to suffer any direct damage."[4]

Though this country has now long been, and, it is hoped, will long continue to be, neutral,—it may not be unuseful to see how, when Great Britain was belligerent, for the purposes of trade, the neutral character could be taken from the place of the individual's actual residence, where he resided and carried on business, reaping the advantages of a country's trade, and contributing to its well-being,—and must, for the purposes of trade, be considered as belonging to that country.[5] Moreover, this character, that is gained by such a residence, ceases with that residence; it is an adventitious character, which no longer adheres to him from the moment he puts himself in motion truly to quit the country, without any intention of returning;[6] and there is no case nor any principle to support the proposition,—that a man, having a house of trade in the enemy's country, as well as in a neutral country, should be considered, in his whole connections, as an enemy's merchant, as well in those which respected solely his neutral house, as those which belonged to his belligerent domicile.[7] But whatever be the national character of the party, if he carries on business both in the belligerent and in the neutral country, and resides in the latter, his trade connected with the neutral establishment is neutral for the purposes of protection against hostile capture;[8] and a native-born subject of this country, domiciled in a foreign country in amity with this country, can lawfully exercise the privileges of a subject of the country in which he is domiciled to trade with another country in hostility with this.[9] And a

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[1] 2 Vattel, 443. [2] 2 Cauchy, *Le Droit Maritime International*, 80.
[3] 1 Massy, *Le Droit Commercial, &c.*, 165.
[4] 1 Hautefeuille, *Des Droits et des Devoirs des Nations Neutres*, 196.
[5] *Per* Lord Kenyon, in Tabbs *v.* Bondelback, 4 Esp. 109.
[6] *Per* Lord Stowell, in *The Indian Chief*, 3 Rob. 20.
[7] *The Portland*, 3 Rob. 44. [8] *The Herman*, 4 Rob. 228.
[9] Bell *v.* Reid, 1 M. and S. 726.

British subject resident in the English factory at Lisbon was allowed the benefit of a Portugese national character, so far as to render his trade with Holland,—then at war with England, but not with Portugal,—not impeachable as an illegal trade.[1]

Neutral ships, for the purpose of being protected as neutral, must be navigated according to the law of nations, and furnished with all the documents and papers which, as the evidences of her neutrality, are required by that law, as well as by the particular treaties of the countries to which she is trading. It was the rule in this country, that, when parties took the flag and pass of another country, they were not permitted, in case any inconvenience might afterwards arise, to aver *against* the flag and the pass to which they had attached themselves, and to claim the benefit of their real character; for then they were subjected to the further incovenience, that their own real character might be pleaded against them by others.

And as to goods, it was also the rule, that if the goods of a neutral were carried in a neutral bottom, to be delivered in a belligerent country, and under a contract by which these were to become, immediately on delivery, the property of subjects of that belligerent country,—unless such contract had been made when there was no actual war, nor any prospect of war mixing itself with the transactions of the parties,—these goods, taken in the passage to the belligerent country, were held to be belligerent property; and in the time of war any transfer of these goods, on whatever party the risk might be, was prohibited during that passage, as a fraud on belligerent rights, not only in the particular transaction, but in the great facility, which it would necessarily introduce, of evading these rights, without the possibility of detection. And the same rule was applied to belligerent goods to be delivered in a neutral country, which were held to be belligerent goods until so delivered.

But by the Treaty of Taris, 1856, it is declared, that the neutral flag covers enemy's merchandise, with the exception of contraband of war, and also neutral merchandise, with the exception of contraband of war.

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[1] *The Danaous, n.* to 4 Rob. 255.

XII.—FOREIGN SHIPS IN BRITISH WATERS.

By section 324 of the Customs Consolidation Act, 1853 (16 and 17 Vict., cap. 107), it is enacted, that, if it be made to appear to Her Majesty that British vessels are, in any foreign country, made liable to any prohibitions or restrictions as to the voyages in which they may engage, or as to the articles which they may import into or export from such foreign country, Her Majesty may, by Order in Council, impose such prohibitions or restrictions upon the ships of such foreign country,—as to the voyages in which they may engage,—or as to the articles which they may import into, or export from, any part of the United Kingdom, or of any British possession in any part of the world,—*so as to place, in British ports, the ships of such foreign country on as nearly as possible the same footing as British ships in the ports of such country;* and if British ships in any foreign country are directly or indirectly made liable to any duties or charges of any sort or kind whatever, from which the national vessels of that country are exempted, —or, that any duties are imposed upon articles imported or exported in British ships which are not equally imposed upon the like articles imported or exported in national vessels,—or, that any preference whatever is directly or indirectly shown to national vessels over British vessels, or to articles imported or exported in national vessels, over the like articles imported or exported in British vessels,—or, *that British trade and navigation are not, by such country, placed upon a footing as advantageous as the trade and navigation of the most favoured nation,*—Her Majesty may, by Order in Council, *impose such duty or duties of tonnage upon the ships of such nation* entering into or departing from British ports, in any part of the world, or such duty or duties on all goods, or on any particular classes of goods, as may appear justly to countervail (to compensate and make amends for) the disadvantages to British trade or navigation.[1] Her Majesty may define what ships are to be considered as ships of the country or countries to which said order applies, and all ships answering to that description are to be considered ships of that country or of these countries, for the purposes of said order.[2]

By section 6 of the 3 and 4 Vict., cap. 65, it is enacted, that the High Court of Admiralty (of England) has jurisdiction to decide all claims or demands whatever in the nature of salvage for services rendered to or damage received *by any ship or sea-going vessel,*—or in the nature of tonnage, —or for necessaries supplied to any foreign ship or sea-going vessel,—and to enforce the payment thereof, whether such ship or vessel may have been within the body of a county, or upon the high seas, at the time when the services were rendered, or the damage incurred, or necessaries furnished, in respect of which such claim is made. And section 4 enacts, that the said Court of Admiralty shall have jurisdiction to decide all questions as to the title to or ownership of *any ship or vessel,* or the proceeds thereof remaining in the registry, arising in any cause of possession, salvage, damage, wages, or bottomry, which shall be instituted in the said court.

It has been held that this Act gives the court power over the freight as

[1] Sec. 325. [2] Sec. 326.

well as over the ship itself, in proceedings on a bottomry bond;[1] and that, when a ship is arrested within the jurisdiction of the High Court of Admiralty (three miles from the shore), the power of that court extends to acts done on the high seas, and to places within the British dominions abroad;—in this case, to a collision in one of the channels of the Hoogly, near Calcutta.[2] But in a collision between a foreign and a British ship *out of British waters*, the British law does not apply, and the rule of the sea,—the general sea-law common to all nations,—governs their conduct; and this rule is:—that, when two vessels are approaching each other on nearly the same course,—each is bound to port her helm and run to starboard of the other; but, when one is close-hauled,—the other,—the running ship having the wind free,—is bound to give way to the one close-hauled.[3] And when the now repealed sections 296, 298, and 299 of the Merchant Shipping Act were in operation, and enacted, that, if a ship, when meeting another ship, did not port her helm, and a collision ensued,—such ship could not receive any compensation for any damage sustained:—and a British and foreign vessel having come into collision,—the British ship not having ported her helm, and it was pled, that, on account of her own failure, she could not recover compensation:—but, it was held, that these sections did not apply to cases in which foreign vessels were concerned, and that the general maritime law, by which the foreign vessel was in fault, must prevail, and the British vessel was entitled to compensation for the damage she had received.[4] See *infra*, sections 57 and 58 of the 25 and 26 Vict., cap. 63.

The word "necessaries" in section 6 of 3 and 4 Vict., cap. 65, means articles immediately necessary for the ship, as distinguished from those merely necessary for the voyage,[5] and an enlarged meaning is to be applied to the term "necessaries" for the use and benefit of a foreign ship, for which the ship herself is liable.[6] Thus, it has been held,—that butcher's meat supplied to a foreign ship is a necessary;[7]—that copper-sheathing to a foreign ship is a necessary,[8]—and coals supplied to a foreign steamer at different times for several voyages, may be recovered as necessaries.[9] In this case, coals for several voyages had been furnished by A. B. & Co. of London to a steamer trading between Kampen in Holland and London, and they were the agents of the vessel, of which the partner B. was a part-owner:—the steamer shortly afterwards discontinued trading to London, and in 1857 was sold by auction at Amsterdam; and in 1858 the vessel was in the port of Hull, and was arrested by A. B. & Co.:—it was held, that they were entitled to recover under said section 6, as for "necessaries supplied to a foreign ship." Advances of money to pay for necessaries supplied to a foreign ship in a foreign port have also been allowed under this section.[10] And if the party who has furnished necessaries to a foreign ship takes a bill for the amount, he is entitled, on this bill being dishonoured, to proceed against the ship for his original debt.[11] So an English firm, having accepted and paid a bill drawn on them abroad by

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1 *The Fortitude*, 2 W. Rob. 217.
2 Prowse *v.* European and American Steam-Shipping Co., 13 Moore, P. C. C. 484.
3 *The Dumfries*, 1 Swabey, 63; *The Chancellor*, 4 L. T. *n. s.* 627.
4 *The Zollverein*, 2 Jur. *n. s.* 429.
5 *The Countess of Fregeville*, 4 L. T. *n. s.* 713.
6 *The Perla*, 1 Swabey, 253.
7 *The N. R. Gasfabrick*, 1 Swabey, 344.
8 *The Perla, ut sup.*
9 *The West Friesland*, 1 Swabey, 454.
10 *The Masonic*, 5 L. T. *n. s.* 460.
11 *The N. R. Gasfabrick, ut sup.*

the captain of a foreign ship, to procure necessaries abroad, may proceed against the ship in the Admiralty Court under section 6 of this Act.[1]

But this Act does not apply to ordinary mercantile accounts between owner and agent.[2]

The Merchant Shipping Act Amendment Act, 1862, enacts, that *whenever foreign ships are within British jurisdiction* (three miles from the shore of the United Kingdom),—the regulations in Table C of the Act, or such other regulations for preventing collisions as, for the time being, are in force, and all the provisions of the Act as to these regulations, or otherwise relating to collisions, apply to such foreign ships, which, in any cases in a British court concerning matters happening within British jurisdiction, are to be treated, so far as regards these regulations and provisions, as if they were British ships.[3] And if any foreign Government is willing that these provisions and regulations, or any of them, shall apply to ships of that country when beyond the limits of British jurisdiction,—Her Majesty, in Council, can direct that such regulations and provisions, &c., shall apply to the ships of such foreign country, whether within British jurisdiction or not.[4]

When it is made to appear to Her Majesty that the Government of any foreign country is willing that salvage be adjudged by *British courts*, for services *in saving life* from any ship of such country, when that ship is beyond the limits of British jurisdiction,—Her Majesty, by Order in Council, can direct that the provisions of the Merchant Shipping Act and the Amendment Act, as to salvage for saving life from British ships, shall apply to the ships of that foreign country, whether within British jurisdiction or not.[5]

And if the rules in the Merchant Shipping Act for measuring the tonnage of merchant ships have been accepted by the Government of any foreign country, and are in force in that country, Her Majesty, by Order in Council, can direct that the ships of that country be held to be of the tonnage stated in their certificates of registry or other national papers without such ships being remeasured.[6]

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[1] *The Onni*, 1 Lushington, 154.
[2] *The Countess of Fregeville, ut sup.*
[3] 25 and 26 Vict., cap. 63, sec. 57.
[4] Sec. 58.
[5] Sec. 59.
[6] Sec. 60.

THE

LAWS OF MARINE ASSURANCE.

THE LAWS OF MARINE ASSURANCE.

I.—SUBJECT-MATTERS OF ASSURANCE.

It is a general rule, that all goods and merchandise which can be lawfully imported or exported, all vessels employed in lawful commerce, and the freight of these vessels, can be effectually assured. Profits, or expected profits, and commissions, which may be realised from these goods and merchandise, in so far as exposed to sea risks, can also be assured.

But goods and merchandise intended to be imported into, or exported from, this country, contrary to law, and the ships engaged in conveying such goods and merchandise, and the freight of the ships so engaged, are not assurable, and assurance upon them is illegal; and so there can be no assurance of goods or merchandise intended to be exported or imported contrary to the revenue or navigation laws, nor of any commerce in contravention of the laws regulating commerce,[1] though a lawful cargo may be purchased with the proceeds of an unlawful one; and if on a separate and distinct voyage, an assurance upon the legal voyage will attach.[2] But as the laws of this country do not recognise the revenue laws of any other country, an assurance upon goods, or a voyage, contrary to the revenue laws of foreign countries is not illegal, though carried on by British subjects;[3] and although a policy, unlawful by the law of the land where it is made, is void, yet an assurance in this country upon a smuggling voyage, prohibited only by the revenue laws of the foreign country to which the ship trades, or intends to trade, is good and valid.[4] Therefore, an assurance upon a foreign voyage, on which it was known to the underwriter that the assured intended to carry on a trade with the subjects of a foreign state, forbidden by the laws of that state, yet the assurance was held legal and binding.[5]

Warlike stores, and what are termed contraband of war by the law of nations, when sent to either of the hostile parties, are contraband to the other, and are subject to seizure and confiscation, in whatever vessel found;[6] and, therefore, the exportation of warlike instruments, as gunpowder, from

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[1] Mar. 42; 1 Arn. 704, 713.
[2] Bird *v.* Appleton, 8 I. R. 566.
[3] Mar. 44.
[4] 1 Arn. 704, 706.
[5] Lever *v.* Fletcher, 1 Park, 507.
[6] Mar. 54; 1 Arn. 736.

one country to another, during time of war, on whatever pretence, is illegal.[1] But as a neutral state may carry these contraband goods, subject to the belligerents' right of search and seizure, an assurance by a neutral on these goods, in a neutral country, is valid.[2]

As all commerce with a place in a state of effective blockade is prohibited, an assurance on ship, goods, or freight to a blockaded place is illegal.[3] There may be a *blockade in fact*, by actual investiture, and a *blockade in law*, by notification; but the blockade must be duly notified by the sovereign power who has undertaken it, and this notification is not to be extended by those employed to carry it into execution.[4] If the blockade is one in fact, the notoriety of the fact will be sufficient to affect a master admitted to be cognisant of the fact;[5] and warning on the spot is sufficient notification of such a blockade.[6] But the sovereign power must make due notification of the blockade to all neutral states;[7] and an assurance to a blockaded port is not in itself illegal, provided the blockade was not known, or could not reasonably have been expected to be known, to the captain before sailing. As, where a vessel had sailed from Liverpool before a blockade was notified in this country, but afterwards put into a port in the Western Islands for repairs, after such notification in the *London Gazette*, and, during her stay there, the captain had to go to Greenock for sailors to supply the place of deserters, when the blockade might have been known at that port, but it was not actually known to the captain:—it was held, that the knowledge of the captain was not to be presumed, because, in a question of assurance, notification to the state was not notification to all the individuals of that state.[8] But although sailing to a blockaded port, with an intention to break the blockade, is itself a breach of the blockade,[9] yet, if the captain had no intention to break the blockade, the assurance is not illegal,—as the vessel may sail for the blockaded port without contravening the law of nations, for the purpose of inquiring whether the blockade continued or not.[10]

The assurance of seamen's wages is prohibited from motives of public policy;[11] but the reason does not apply to the master, nor to the assurance of goods which the seamen may purchase abroad with their wages, nor of wages already earned and due.[12] A captain can assure his wages and his share of the ship, and also assure his commission on the sale of goods intrusted to his care.[13]

When goods are assured altogether in one policy, without distinguishing the particular parcels, and the sums assured on each, and some of these goods are of a nature to make the voyage illegal, the whole contract will be void. As, where goods were assured to the Brazils, as should be thereafter declared, each package to pay average, the same as if separately assured; the goods consisted of hardware, and a small quantity of naval stores belonging to the same person; and the ship was captured:—in an action on the policy, it was held, that the smallest quantity of naval stores

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[1] Gibson *v.* Service, 5 Taunt. 433.
[2] 1 Arn. 740.
[3] Mar. 56; 1 Arn. 741.
[4] *The Henrick and Maria*, 6 Rob. 138.
[5] *The Tutela*, 6 Rob. 177.
[6] *The Mercurius*, 1 Rob. 80.
[7] Mar. 56; 1 Park, 177.
[8] Harratt *v.* Wise, 9 B. and C. 712.
[9] *The Columbia*, 1 Rob. 130.
[10] Naylor *v.* Taylor, 9 B. and C. 718.
[11] Webster *v.* De Tastet, 7 T. R. 157.
[12] 1 Park, 17; 1 Arn. 208.
[13] Mar. 63; 1 Arn. 208; King *v.* Glover, 2 B. and P. N. R. 206; Hawkins *v.* Twizell, 5 E. and B. 883.

(the exportation of which was prohibited by statute) subjected the ship to forfeiture, and rendered the whole adventure illegal; and that the policy, being one entire contract, which could not be severed by the subsequent specification, was, therefore, wholly void.[1] But where a cargo, consisting chiefly of 300 barrels of gunpowder, for half only of which a licence to export had been obtained, was assured from London to Madeira:—it was held, that the 150 barrels for which the licence had been granted were untouched by the illegality of the rest of the transaction, and that, therefore, the policy was available to that extent.[2] And where, under a licence, goods are imported from a hostile country to England, an assurance on these goods is valid, though other goods not licensed, the property of another person, are in the same ship.[3]

In this country, freight is legally assurable, whether future, expected, or contingent, and even dead freight;[4] and the freight may be assured either for the whole or part of the voyage.[5] But to entitle the assured on freight to recover, his right to freight must have actually commenced,—as, by the vessel having sailed on the voyage for which she was chartered;[6] or, where part of the goods have been put on board, and the ship is in a condition to receive the rest;[7] or, where the ship, under a charter-party, is in a condition to take in her homeward cargo, which is ready for her, but she is lost in a hurricane before any goods are on board;[8] or, where the cargo is ready to be put on board, about seven miles from the port, but the ship was lost by an accident in going out of dock;[9] or, where there has been an actual contract entered into for shipping the goods, and the ship is ready to receive them, but, before any of the goods are on board, she is lost by the perils of the sea.[10]

But where the shipment of a whole cargo has not been contracted for, the owner is only entitled to recover from the assurer, whether under an open or valued policy, a sum corresponding to the freight of the goods actually put on board;[11] unless where, after the vessel under charter has taken in part of her cargo, and while in the course of taking in the remainder, which is on shore, and ready to be shipped, she should be lost,—the assured on freight is entitled to recover as for a total loss.[12]

When freight is to be paid in advance, or is to be paid at all events, there is no doubt that the freighter may protect himself by assurance; but if it be a stipulation in the charter-party that the captain is to be supplied with cash for the ship's use, and to draw a bill on the freighters, which is paid:—this not being a payment of freight in advance, but a loan to the owners, is not an assurable interest by the freighters.[13]

Profit, or expected profit, can also be assured, provided the person assured has a real interest in the subject from which the profits are to arise;[14] and that, if there had been no shipwreck, there would have been a profit on the adventure.[15] But where the owners of two ships, trading to the coast of Africa, and which were then expected to arrive in Liverpool with

1 Parkin *v.* Dick, 11 East, 502.
2 Keir *v.* Andraade, 6 Taunt. 496.
3 Pieschell *v.* Allnutt, 4 Taunt. 792.
4 Mar. 71; 1 Arn. 201.
5 Taylor *v.* Wilson, 15 East, 324.
6 Thompson *v.* Taylor, 6 T. R. 478.
7 Forbes *v.* Aspinal, 13 East, 328.
8 Williamson *v.* Innes, 8 Bing. 81.
9 De Vaux *v.* L'Anson, 5 Bing. *n. c.* 519.
10 Flint *v.* Flemyng, 1 B. and Ad. 45.
11 Forbes *v.* Cowie, 1 Camp. 520.
12 Davidson *v.* Willasey, 1 M. and S. 312.
13 Manfield *v.* Maitland, 4 B. and A. 582.
14 2 Park, 562; 1 Arn. 238.
15 Hodgson *v.* Glover, 6 East, 316.

cargoes of palm-oil, agreed, verbally, to sell 200 tuns of palm-oil to arrive by the one vessel, and 100 tuns by the other; the first vessel arrived with 100 tuns of oil on board, which were delivered to the purchaser; but the second, having 50 tuns on board, was lost by perils of the sea;—it was held, that the oil, with the expected profits, having been assured, but the contract being a verbal contract only, and could not be enforced, the assured had no assurable interest in the profits.[1] But if the assured has an interest in the cargo, and he prove that profit would have been made, if, but for the perils of the sea, it had arrived,—he is entitled to recover, on an open as well as on a valued policy.[2] But this profit can only be claimed for that portion of cargo actually on board and lost by the perils assured against, and not for that portion of it which was on shore, ready to be shipped, and not lost by these perils.[3] And as assurance is for the purpose of affording protection against dangers and perils casual to a sea voyage, and which may or may not happen,—so, it does not apply to a subject, of which the loss or injury must take place in the ordinary course of things:—an assurance against "perils of the seas" does not cover an injury arising from the *ordinary* action of sea-water upon an article exposed to that action in such a state as unavoidably to receive injury from it.[4]

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[1] Stockdale *v.* Dunlop, 6 M. and W. 224.
[2] Eyre *v.* Glover, 3 Camp. 276.
[3] M'Swiney *v.* Ro. Ex. Ass., 14 Q. B. 646.
[4] Paterson *v.* Harris, 7 Jur. *n. s.* 1276.

II.—PARTIES WHO MAY BE ASSURED AND ASSURERS.

The general rule is, that every person, whether a British subject or a foreigner, may be assured, with the only exception of the subjects, born or resident, of a state at war with this country, or which has actually declared war against it, in which event they become alien enemies;[1] and that although the goods may have been shipped, and the assurance effected, before the breaking out or the declaring of the war;[2] or although it was not known to the underwriter, at the time of making the policy, that war had been declared, or that the assured was a citizen of the hostile country.[3]

It makes no difference though the *agent* of the assured may have effected the assurance here, *after* hostilities had commenced between the country of the assured and Great Britain, but without the agent's knowledge of the fact; only he is entitled to a return of premium.[4] But if after the policy has been effected, and a loss happened, the assured has become an alien enemy, the underwriter must specially plead that objection;[5] and also prove, not merely that he was living in the hostile territory, but that either he was born in that country, or was domiciled there at the time of bringing the action.[6]

If trading with an enemy be authorised by the sovereign's licence, this will legalise an assurance on ships or goods in name of a British subject, and he is entitled to recover in a court of law, for the benefit of those who were the objects of the licence authorising the trade in question;[7] and a licence to a British subject, "on behalf of himself and others," will legalise the exportation of a British cargo consigned to an alien enemy at a hostile port, whether it be the joint property of the British subject and of an alien enemy, or the sole property of, and exported by, alien enemies.[8] And a licence to a British subject, for a particular ship, to go to a hostile country, will protect the property of an alien enemy residing in the hostile country, shipped on his account in this country; and, therefore, an assurance for his benefit is legal.[9] But an assurance upon the property of an alien enemy is illegal when not protected by such licence.[10]

The subjects of neutral states have the same right to carry on their commerce with the belligerent states during war as during peace, provided that such commerce be restricted to such transactions and trade as do not interfere with the rights of these parties, or with the issue of the contest; and that trade cannot, in time of war, be extended to commerce arising out of the state of war, and which could not have been carried on in time of peace.[11] Goods consigned to a neutral or friendly port on behalf of a neutral, can be legally assured, though the neutral happen at the time to be resident in an enemy's country or at a port of hostile occupation.[12] And where a British subject is interested in part of the cargo licensed, he can recover, on a valued policy, to the extent of it, averring the interest in him-

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1 Mar. 521; 1 Park, 7, 522; 1 Arn. 89.
2 Brandon *v.* Nisbett, 6 T. R. 23.
3 Campbell *v.* Innes, 4 B. and A. 423.
4 Oom *v.* Bruce, 12 East, 225.
5 Flindt *v.* Waters, 15 East, 260.
6 Harman *v.* Kingston, 3 Camp. 150.
7 Kensington *v.* Inglis, 8 East, 273.
8 Flindt *v.* Crockatt, 5 Taunt. 522; Flindt *v.* Scott, ibid. 624.
9 Hullman *v.* Whitmore, 3 M. and S. 337.
10 Bristow *v.* Towers, 6 T. R. 35.
11 1 Park, 509.
12 Broomley *v.* Heseltine, 1 Camp. 75.

self, though an alien enemy be interested in other parts of the cargo.[1] So also a British-born subject, domiciled in a foreign country in amity with this, may lawfully exercise the privileges of a subject of the country in which he is domiciled, to trade with another country in amity with that country, but at hostility with this; and an assurance effected here on ship, freight, and goods, to a port in this country, is good.[2]

In England, by 6 Geo. I., cap. 18, no corporation or partnership could underwrite policies of marine assurance, except two chartered companies,—the Royal Exchange Assurance and the London Assurance Companies,—which had the exclusive right of assuring ships and merchandise at sea or going to sea, as a company upon joint-stock capital, although private individuals were at liberty to underwrite policies, and engage in assurance, or lend on bottomry, so as the same was not upon account of any corporation, company, or partnership. But this Act was repealed by 5 Geo. IV., cap. 114 (June 1824), which enacted, that "so much of the said Act as restrains any corporation or body politic, society, or partnership, or persons acting in any society or partnership, from granting, signing, and underwriting any policy, or policies of assurance, or making any contract for assurance, of or upon any ship or ships, or goods or merchandise, at sea or going to sea, or from lending money by way of bottomry, or as makes any such contract void, or declares that the same shall be adjudged usurious, or as imposes any penalty or forfeiture in respect of any such policy of assurance or contract, shall be and the same is hereby repealed" (sec. 1). And it is also enacted, that nothing in the Act shall effect the rights and privileges of the said two corporations, "otherwise than by making it lawful for other corporations and bodies politic, and persons acting in society or partnership, to grant and make such policies of assurance and contracts of bottomry" (sec. 2).

Assurance could always be done by any number of individuals, and to any amount of joint-capital, provided each underwriter only undertook severally for himself, for his own share, and was not liable for his proportional part of the loss arising from the insolvency of others.[3] Any number of shipowners and others can enter into an association for mutual assurance, where each is liable only individually, according to the terms of their respective subscriptions.[4] And at the present day private individuals, partnerships, or companies, with or without charters, may effect assurances without any restriction.

It is a common provision, in the contracts of assurance companies and associations, that either can sue or be sued in name of their manager or secretary, and that they shall be lawfully cited by the company and the directors collectively being cited at the company's place of business, and by the manager or secretary being cited according to law; but if this is not provided for, it has been held in the House of Lords, that a private assurance company can be sued, by directing the action against the descriptive name or firm under which it carries on business, and against those individual partners who had underwritten the policy, as directors or managers.[5] In one case, on a policy upon ship and goods, against the five subscribers, partners and directors of the assurance company, it was pled,

[1] Feise *v.* Aguilar, 3 Taunt. 506. [2] Bell *v.* Reid, 1 M. and S. 726.
[3] Lees *v.* Smith, 7 T. R. 338; Dowell *v.* Moon, 4 Camp. 166.
[4] Strong *v.* Harvey, 3 Bing. 304. [5] Gavin *v.* Sea Ins. Co., 2 Dow and Clark, 124.

that the stock and funds of the company had not been and were not sufficient, and that the name of one of the directors was not expressed or specified on the policy, in terms of section 11 of the 35 Geo. III., cap. 63 (now repealed), whereby the assurance was void and null:—but it was held, that the policy showed a joint liability, capable of being enforced at law, if the company had sufficient capital stock and funds; and that the assurance having been made by the company of which the policy subscribers were members, it was immaterial, since the 5 Geo. IV., cap. 114, that the individual subscribers were not named in the policy.[1]

A similar objection to a policy had been made in a previous action, that the party sued did not subscribe the policy, nor was his name expressed or specified in or upon the policy:—but it was held, that the 6 Geo. I., cap. 18, which prohibited any partnership, unless the two chartered companies, from underwriting a marine policy, having been repealed by the 5 Geo. IV., cap. 114, it is not necessary that the name of every individual subscriber constituting the assuring firm should be expressed on the policy, but a subscription in the name of the partnership firm was a sufficient compliance with section 11 of the 35 Geo. III., cap. 63.[2] And the same objection having been taken in another case, it was held bad, because the policy was made by an assurance company or partnership, and the statute last referred to does not require, in that case, the name of every member of the firm to be expressed on the face of the policy.[3]

The policies of such an assurance company usually condition "that the capital stock and the funds of the company should be alone liable to answer and make good all claims and demands under or by virtue of the policy, and that no shareholder should be in anywise liable or subject to any claims or demands, or be in anywise charged, beyond the amount of his shares in the capital stock of the company;" and, in an action for a total loss of freight under a policy having such a clause, it was held, that, as the assurers were a corporation, the remedy was against the corporate funds, and action lay whether there were funds or not, and the liability to the action was direct, and not merely depending on the existence or non-existence of the funds, which, failing a denial, would be presumed to exist.[4]

Mutual assurance associations, or assurance clubs, exist in many ports, and are conducted by a committee of subscribing shipowners, and a manager, who is authorised to issue policies on the ships of the members, and who, with the committee, adjusts any loss claimed, and recovers from each member his individual share of each loss.

It is a usual condition in the policies of these clubs or associations, that the amount of a loss is first to be ascertained and adjusted by the committee, and then to be paid within a certain time thereafter; and, for the amount of the loss, each member is separately and individually, not jointly, liable for his own share only.[5] The amount of each member's liability is usually limited by the rules; if any further limitation is desired, it must be plainly expressed on the policy itself.[6] And when once a member has contributed his quota of the loss in the manner provided by the rules, he is under no further obligation in respect of the policy.[7] The rules of an association

[1] Hallet *v.* Dowdall, 18 Ad. and El. *n. s.* 2.
[2] Reid *v.* Allan, 6 W. H. and G. 326.
[3] Dowdall *v.* Clark, 14 Jur. 311.
[4] Sunderland Marine Ins. Co. *v.* Kearney, 16 Ad. and El. *n. s.* 925.
[5] Strong *v.* Harvey, 3 Bing. 304.
[6] Gray *v.* Gibson, L. R. 2 C. P. 120.
[7] Redway *v.* Sweeting, L. R. 2 Ex. 400.

provided that the sum to be paid to any member suffering a loss should, in the first instance, be ascertained by the committee, and if this sum was agreed to be accepted in full of his claim, he was then to be entitled to sue for the amount; but, in case of difference as to the settling of any loss or claim for average or any other matter relating to the assurance, then arbitrators were to be appointed, who were to decide upon the claims and matters of difference according to the rules and customs of the association; and it was declared, "that no assurer, who refuses to accept the amount settled by the committee, shall be entitled to maintain any action at law or in equity on his policy," until the arbitrators have decided, and "then only for such sum as they shall award;" and this decision of the arbitrators was declared to be essential to any action:—it was held, that these conditions were lawful, and that until the award was made no action was maintainable.[1] And in an action for a total loss on a policy having a similar clause, it was held, that a reference to arbitration, or an offer to refer, must be made before action on the policy for the total loss, which could not be maintained on a mere refusal to pay that claim; and that it was a good answer to the action, that the claim had not been adjusted and settled according to the rule,—that there was a dispute in respect thereof within the meaning of the rule,—and that it had not been arbitrated upon, nor had the arbitrators given a decision thereon.[2]

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[1] Scott *v.* Avery, 5 H. L. Cases, 814.
[2] Tredwin *v.* Holman, 8 Jur. *n. s.* 1080; and see also Elliot *v.* Ro. Ex. Ass. Co., L. R. 2 Ex. 237.

III.—ASSURANCE BROKERS.

The business of effecting marine assurances is usually done by brokers, who make the management of this business their peculiar profession, and the assured and the assurer have seldom any personal communication on the subject. The former trusts to the broker to procure the proper responsible parties to undertake the risk, to attend to the regularity of the contract, and to obtain a correct and legal policy; and as the assurer undertakes the risks presented by the broker, he looks to him for a fair and candid disclosure of the whole material circumstances affecting the risk, and for the payment of the premiums:—to him both parties look for the legal and regular completion of the contract, so as to bind the one party effectually to the other.[1]

The broker is thus a middleman between the assured and the assurers; and the relation of debtor and creditor does not exist directly between these parties themselves, but between the broker and them respectively. To the underwriter he is debtor for all the premiums, for which, in the account between them, he allows credit as having been actually received by him; and he debits the underwriter with all returns of premium, and such losses as he is authorised to settle and receive. On the other hand, he debits the assured with the amount of the premiums on the policies effected by him, and for which he is responsible to the underwriter, and credits him with any return premiums which may be due, and the losses which he has been authorised to recover.[2]

When the policy is effected through a broker, it is delivered to him with the usual acknowledgment of the premium having been paid; but, though this is conclusive evidence of payment of the premium as between the underwriter and the assured, where there is no fraud or collusion on the part of the latter, yet, as the broker is intrusted with the policy only as factor or agent for the underwriter, the receipt in it is no evidence of payment by the broker to him.[3]

The broker, in possession of the policy and receipt, is entitled to recover from the assured the amount of the premium, for which the underwriter thus allows him credit.[4] And in an action by the assured against the underwriter for a loss, the latter cannot set off the premium, though he has not been paid by the broker, if a legal contract has been entered into, by which the broker made himself liable to the underwriter for the amount of it.[5] But although the broker has become bankrupt, without having paid the premium, his assignees are entitled to recover the premium from the assured.[6]

Although the broker cannot meet the underwriter's claim for the premium, by the receipt in the policy, he is entitled to deduct returns of premium due before action brought, and pay over the difference only to the underwriter, he having never parted with the policies.[7] But where the broker has effected policies in name of the principal under a *del credere* commission, he cannot set off against an action for the premium, total

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1 Mar. 233; 2 Park, 799.
2 Mar. 233; 1 Arn. 110.
3 2 Park, 811; 1 Arn. 114.
4 Power *v.* Butcher, 10 B. and C. 329.
5 De Gaminde *v.* Pigou, 4 Taunt. 247.
6 Power, *ut sup.*
7 Shee *v.* Clarkson, 12 East, 507.

losses which happened on these policies, for which he had accounted to his principal;[1] unless the amount of the loss be ascertained and acknowledged by the underwriter, the broker holding a *del credere* commission;[2] or, unless the policies have been effected in his own name, whether on account of himself or principal.[3]

In order to entitle a broker to settle losses with the underwriter, he must have a special authority from the assured to that effect;[4] but, even under that authority, the broker is only entitled to receive payment from the underwriter for the assured *in cash*, and, therefore, a custom to set off the general balance due to the underwriter in the settlement, between him and the broker, is not payment to the unknowing assured;[5] and the underwriter will not be entitled to treat this set-off between him and the broker as payment to the assured—the latter not being bound by a usage of which he was not cognisant.[6] And where the assured, who resided at Plymouth, employed a broker in London to recover a loss from the underwriters (an Irish assurance company carrying on business in Dublin, and having a branch office in London), and the latter adjusted the loss by setting off, in the general account between them, a debt due to them from the broker for premiums, when the name of the underwriter was struck off the policy;—it was proved to be the custom of Lloyd's Coffee-house to consider such set-offs as payment between the broker and the underwriter; but the broker became bankrupt, and never paid the money to the assured:—it was held, that the set-off in account, as between the underwriter and the broker, was not payment to the assured, as the broker had only authority to receive payment for the assured in money;—that the custom which prevailed at Lloyd's, was not binding on the assured, who were not cognisant of it, and had not assented to it;—and that the erasure of the underwriter's name from the policy, not having been done with the assent of the assured, did not discharge the former.[7] And a broker effected at Lloyd's an assurance upon a ship for the owner, and took the policy in his own name, and kept it in his possession:—the ship was lost, and the loss was adjusted between the broker and underwriter, according to the practice at Lloyd's—by the underwriter setting off the amount payable *by* him for the loss under this policy, against the balance due *to* him by the broker for premium on other policies,—but this practice was not known to the assured:—it was held, that the assured was not bound by this practice, and that he was entitled to recover against the underwriter, without regard to this settlement.[8]

It has been also held, that the underwriter was not discharged by the policy being delivered to the broker for the purpose of settling the loss, which he adjusted with the underwriter, payable at a month; and the broker, having charged the underwriter in account for the loss, transmitted to the assured an account, in which he stated himself *to be debtor* for the amount of the loss, and, for the balance of that account (the underwriter's name never having been struck off the policy), the assured drew a bill upon the broker, which was accepted but not paid.[9] But, if there is

[1] Cumming *v.* Forester, 1 M. and S. 494.
[2] Wienholt *v.* Roberts, 2 Camp. 586.
[3] Koster *v.* Eason, 2 M. and S. 112.
[4] 2 Park, 820.
[5] Todd *v.* Reid, 4 B. and A. 210.
[6] Scott *v.* Irvine, 1 B. and Ad. 605.
[7] Bartlett *v.* Pentland, 10 B. and C. 760.
[8] Sweeting *v.* Pearce, 9 Scott, *n. s.* 534.
[9] Russell *v.* Bangley, 4 B. and A. 395.

sufficient evidence of a custom, well known in the place of the assured, for the brokers and underwriters to make settlements in accounts, by taking credits as payments,—and of the knowledge of the assured of such a custom,—and of their having authorised the broker to make such a settlement,—and to give them, the assured, credit for the loss so adjusted, for the amount of which the assured draw on the brokers;—it was held, that the underwriters were thereby discharged.[1] If, however, the agents of the assured have adjusted the amount of the loss, according to the usage, with the broker of the underwriter, and received from him a credit-note for that amount, payable in a month, while he had funds of the underwriter sufficient to meet the amount, but, after the credit-note was due, the broker became insolvent:—it was held, that the underwriter was not discharged.[2]

Although the receipt on the face of the policy is a bar to any action for the premiums, by the underwriter against the assured, except in cases of fraud, yet, as between the underwriter and the broker, it is no such bar; and, where the underwriter gives the broker credit in account for the premiums, the latter may bring his action against the assured for the amount of such premiums, whether these have been paid over by him to the underwriter or not.[3] On the broker's failure, his assignees are entitled to recover from the assured the amount of the premiums on the assurances effected by him;[4] and, in an action by the assured against the underwriter, for a total loss, the latter cannot set off the premiums against this claim of the assured, although these had never been paid by the broker.[5]

On the bankruptcy of the underwriter, a claim may be made against the broker for the premiums upon the assurances effected by him, or for the balance of accounts between him and the underwriter; and, as his agency ceased on the bankruptcy of the underwriter, he cannot set off against that debt, without special authority, sums due from the underwriter, for return of premium, whether due before or after the bankruptcy.[6] But, where policies had been effected in name of the broker's own firm, and others in name of their firm, on account of the principals, the brokers could only set off such losses and returns as were due on the policies effected in name of their own firm—these having become due before the underwriter's failure, though not adjusted, and for the amount of which the brokers had allowed their principals credit.[7] And, where the brokers had effected policies on goods on account of their principals, but in their own names, and had accepted bills drawn on them on account of these goods, which were consigned to them, and lost before arrival:—it was held, that the brokers could set off such losses against the assignees of the bankrupt underwriter, though they had no commission *del credere*, nor had there been any adjustment.[8] If, however, the broker, either under a *del credere* commission or not, effects the policy in his own name *as agent*, or in the name and on the account of his principals, he has no right to set off unadjusted losses which happened on such policies, against a demand for the premiums, although the losses claimed were total, and the broker had accounted for them with his principal.[9]

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1 Stewart *v.* Aberdein, 4 M and W. 211.
2 Macfarlane *v.* Giannacopulo, 3 H. and N. 860.
3 Mar. 239; Arn. 137.
4 Airy *v.* Bland, Mar. 239.
5 De Gaminde *v.* Pigou, 4 Taunt. 247.
6 Minnett *v.* Forrester, 4 Taunt. 541.
7 Koster *v.* Eason, 2 M. and S. 112.
8 Parker *v.* Beasley, 2 M. and S. 423; Davies *v.* Wilkinson, 4 Bing. 573.
9 Baker *v.* Langhorne, 4 Camp. 396; Peele *v.* Northcote, 7 Taunt. 478.

The broker, or his assignees, can maintain action against the assured, for the amount of premium for which he has received credit with the underwriters;[1] but, as the broker is answerable for unskilfulness or negligence in the performance of his duty,[2] therefore, the assured will be entitled to set off against that claim, the damages sustained by him, through the broker's failure to assure the premiums according to direction;[3] or, through the broker's failure to inform his principal, that he had failed to effect an assurance according to special instructions given him.[4]

The broker has a lien upon the policy in his hands, without any notice to the underwriters,—not only for the premium and commission due on the particular policy, but, also, for the general balance due him on the account between him and his principal.[5] If the broker parts with the policy, and subsequently receives possession of it for any purpose, this right of lien revives;[6] subject, however, to any right of third parties which may have arisen in the meantime.[7] Notwithstanding this lien, the broker may be compelled to produce the policy by the assured, on the trial of an action against the underwriters.[8] The broker must, however, specially plead the mutual credit between the parties, to justify his detention; and, when an Englishman effected a policy in his own name, as agent, telling the broker that the property was neutral, and to warrant it as such,—it was held, that this was a sufficient notification to the broker of the party acting only as agent; and that, in an action by the foreign principal against the broker, he could only set off the money due for the particular premium, and not the general balance due him by the English agent.[9]

An assurance broker, or a mercantile agent acting as an insurance broker, is bound to exercise proper and reasonable care, skill, and judgment in his employment as such; and, therefore, it is a question of carefulness and of fact, to be judged of by the practice of skilful and experienced assurance brokers,—whether they would have done the same, and, then, the jury finds whether the uncommunicated fact was or was not material.[10] Though there are very high judicial authorities who have differed as to this evidence of *the practice* being or not being properly receivable, one point seems very plain,—that the broker or agent ask for and obtain *all* the knowledge and intelligence which his employer has, as to the subject-matter to be assured,—and that,—not himself judging what should or should not be communicated to the intended assurer—he ought to lay before the assurer, *all* the information he thus acquires, and to obtain from his employer, all the further information the assurer may require.

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1 Power *v.* Butcher, *ut sup.*
2 Mar. 242; 1 Arn. 154.
3 Glaser *v.* Cowie, 1 M. and S. 52.
4 Callander *v.* Oelrichs, 5 Bing. *n. c.* 58.
5 Mann *v.* Forrester, 4 Camp. 60.
6 Whitehead *v.* Vaughan, cited in 7th ed. Cooke's Bank. Law, 547.
7 Sweeting *v.* Pearce, 9 C. B. 534.
8 Hunter *v.* Leathley, 10 B. and C. 858.
9 Maans *v.* Henderson, 1 East, 385.
10 *Per* Tindal, C.J., in Chapman *v.* Walton, 10 Bing. 63; and Lord Denham, in Campbell *v.* Rickards, 3 B. and Ad. 840.

IV.—OF THE INTEREST OF THE ASSURED.

As the contract of assurance is a contract of indemnity against loss arising from sea risks upon an uncertain event, and, as there can be no loss where the party assured was not interested in the subject of assurance at the time of the loss,—it is essential, therefore, that the assured have a lawful interest subsisting at the time of the loss, in the subject assured; and he must prove that he was so interested,—if in the cargo, by the production of the invoices or bills of lading,—if in the ship, by the production of the certificate of registry, or even by parole proof, when not contradicted by the certificate,—and if in the freight, by the charter-party or bills of lading.[1]

Under this head, it will be requisite to consider—1. What is an assurable interest; 2. Wager policies; 3. Re-assurance; and, 4. Double assurance.

I.—WHAT IS AN ASSURABLE INTEREST.

From the various and complicated rights and interests which are daily arising in the ever-varying exigencies of commerce, in different individuals to the same subject, it is almost impossible to define precisely what may amount to an assurable interest. But it may be stated, in general, that there must be a real interest, whether legal or equitable, or absolute, qualified, or contingent.[2]

Thus, if one abroad advises his correspondent in this country of goods having been shipped, and gives general directions to assure, which is done, but he afterwards endorses the bills of lading to one to whom he is indebted, and advises his correspondent,—the whole property passes by delivery, and the endorsee has an assurable interest; and, if an endorsement of a bill of lading is so made, as to bind only the nett proceeds, the endorser has still an assurable interest.[3] And, where merchants abroad, being indebted to a house in this country, consigned goods to their agent here, and endorsed to him the bill of lading, and instructed him to hold part of the goods for the house to which they were indebted; that house had given no orders for the goods; but, upon receiving this intelligence, they effected an insurance upon them: it was held, that the house being creditors of the house abroad, was a good consideration for the assignment, and that, therefore, they had a good assurable interest;[4] and, where A assures in his own name, &c., "for the benefit of B," without his knowledge, but who, after a loss, adopts the assurance, A can recover, averring the interest to be in B.[5]

If a merchant abroad, interested in a cargo, mortgages his interest in the cargo and freight, to secure a debt due to his correspondent in this country;—after the mortgage has become absolute, the correspondent may assure the *legal* interest on his own account, and the *equitable* interest on account of the mortgager.[6] And, where the consignee of goods pledges the bill of lading with another person, as a security for advances made by

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1 Mar. 66; 1 Arn. 229.
2 Ibid.
3 Hibbert *v.* Carter, 1 T. R. 745.
4 Hill *v.* Secretan, 1 Bos. and Pull. 323.
5 Hagedorn *v.* Oliverson, 2 M. and S. 485.
6 Smith *v.* Lascelles, 2 T. R. 178; see also Ebsworth *v.* Alliance Marine Co., L. R. 8. C. P. 596.

him, and upon an agreement that the consignee shall effect an assurance on the goods, for the benefit of the pledgee, and deposit the policy with him, the pledgee may sue upon the policy in his own name.[1]

When bills of lading are sent to the consignor's agent in this country, with directions to deliver them to the consignee, on his accepting bills for the amount of the goods, which he refuses to do,—the agent then becomes, in effect, the consignee for the goods, and may either assure them in his own name, as agent for the consignor, or, if he has accepted bills drawn on account of these goods, in his own name only.[2] And, where a corn-dealer sold from 500 to 700 barrels of oats, to be delivered at Portsmouth, and to be shipped by a third party at Youghal, and, four days afterwards, the corn-dealer advised the purchaser, that this third party had engaged room in the packet to take about 600 barrels on his, the purchaser's, account, and thereupon, he, next day, effected an assurance for £400 upon the oats per packet; the oats were shipped, but the packet being bound for Southampton, and the captain refusing to touch at Portsmouth, the corn-dealer sold the oats again, and delivered the bill of lading to another party in Southampton, but the original purchaser insisted on his bargain, in which he threatened to assert his right by action; the packet was lost; and, after a long dispute, the original purchaser agreed, for a consideration, by endorsement on the policy, to vest his interest in the assurance in the corn-dealer:—but it was held, that the original purchaser had a specific interest in the oats, which he might assure; and that, as there was no assent on his part to vary his right or claim to these particular oats, till *after* the policy was effected and the loss known, there was no principle of law on which a change in the interest, after the policy was effected, much less after the loss had happened, could be set up by the underwriters as a bar to such action.[3]

It is now held, that, where a person assigns his interest in ship or goods, *after* effecting a policy of assurance upon that interest, but *before* a loss, he cannot sue, upon the policy, except as trustee for the assignee, where the policy is handed over to him upon the assignment, or there is an agreement that the policy shall be kept alive for his benefit.[4] So a mortgagee of a ship can assure *his interest* therein, and can recover to the amount of his mortgage debt,—or, if he has assured the ship for her full value,—the question, then, will be,—whether he intended the assurance to cover both his own mortgage debt, and also the interest of the mortgager in the ship, in which case, the mortgagee recovers the amount assured.[5] And, a shipowner, after having assured his ship, transferred her, without the policy, to another, by an absolute bill of sale as appearing on the registry, but, in fact, only by way of mortgage:—the ship having foundered, it was held, that the shipowner, being liable for the mortgage debt, had a sufficient interest in the ship to entitle him to recover the whole loss.[6] And, where an assurance was made in name of B. & Co., as well in their own names as in that of all other parties interested, for £2000 on goods, declared to be 360 bales of cotton, lost or not lost, at and from Bombay to London; and it was averred, that the goods were shipped on the voyage, and, that, during the voyage, the party pursuing was interested in these goods to the amount

[1] Sutherland *v.* Pratt, 11 M. and W. 296.
[2] Woolf *v.* Horncastle, 1 B. and P. 316.
[3] Sparkes *v.* Marshall, 2 Bing. *n. c.* 761.
[4] Powles *v.* Innes, 11 M. and W. 10.
[5] Irving *v.* Richardson, 2 B. and Ad. 193.
[6] Hutchinson *v.* Wright, 4 Jur. *n. s.* 749.

assured; that the assurance was made for the use and benefit and on account of the same party; and that the ship met with tempestuous weather during the voyage, and thereby the goods were so wetted and damaged as to be rendered of no use or value:—it was held no defence, that the goods were so damaged before this party acquired any interest in them; and that a party may make an assurance on goods, lost or not lost, though he has acquired his interest in them after a partial loss, unless he bought them with a knowledge of the damage.[1]

But, where, after goods had been shipped, and an assurance effected by the buyer, he became bankrupt, and the sellers stopped the goods *in transitu*, which were taken possession of by their agent at an intermediate port:—it was held, on a loss happening, that, *as nothing had been completed, either by delivery on the one part, or payment on the other*,—the assignees under the buyer's bankruptcy could not recover on the policy of assurance effected by him, inasmuch as the stoppage *in transitu* put an end to the sale, and the assured had no longer any assurable interest.[2]

It has been held, that an assurance by carriers on a canal, upon goods on board thirty boats named, to the extent of £12,000, on goods as interest might appear thereafter, was sufficient to cover the interest of the carriers in the property under their charge;—that the policy was not exhausted, when, *once*, goods to the value of £12,000 had been carried by all or each of the boats, but that it continued throughout the year, to protect all the goods afloat at any one time, up to the amount; and that, upon a loss of goods on board one boat, the assured was entitled to recover that proportion of such loss, which the £12,000 bore to the value of the whole goods afloat at that time, and not to the proportion of £12,000 to the whole amount carried during the year.[3]

The shipowner can assure his freight, either future, expected, or contingent;[4] and that although the contract for freight should not be in writing.[5] But, to entitle the assured on freight to recover, the cargo must have been on board, or ready to be put on board, and there must have been a beginning of the voyage, by the ship's breaking ground, to sail on the voyage assured; as, where a ship, chartered to carry a cargo from Teneriffe to the West Indies,—under a contract to proceed from the Thames to Teneriffe and there load,—sails from the Thames in ballast, and is captured before her arrival at Teneriffe;—the vessel having thus actually sailed on the voyage assured, the assurance attaches.[6] And where, under a charter-party, a ship was in a condition to take in her homeward cargo, which was ready for her, but she was lost in a hurricane before any of the goods were put on board;—it was held, that the policy on freight attached.[7] But, where the assurance is from A, B, and C, to D, and the ship is engaged to carry a cargo from A to B, and from B to D, and she is lost in going with a cargo from B to C,—the policy does not attach, as the risk commences only when she sails for D, her port of destination.[8] But the risk on the freight does not attach unless the goods either are shipped on board, or are ready to be shipped, and there is an actual contract for shipping them,[9] which can

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1 Sutherland *v.* Pratt, *ut sup.*
2 Clay *v.* Harrison, 10 B. and C. 99.
3 Crowley *v.* Cohen, 3 B. and Ad. 478.
4 Mar. 71; 1 Arn. 235.
5 Ware *v.* Miller, 4 B. and C. 538.
6 Thompson *v.* Taylor, 6 T. R. 476.
7 Williamson *v.* Innes, 8 Bing. 81 *n.*
8 Seller *v.* M'Vicar, 1 B. and P. *n. r.* 23.
9 Flindt *v.* Flyming, 1 B. and Ad. 45.

be proved by the arrangements made by the captain for the cargo,[1]—or, by the letters of the parties;[2] and this contract need not be evidenced by deed, nor reduced into writing.[3] So, a general policy on freight, covers the profits the shipowner expects to make by carrying "his own goods in his own ship on the voyage assured."

Where there is not an entire charter-party for the outward and homeward voyage; and the ship is a *seeking ship*, and takes out a cargo to be bartered for goods, to be brought home, and, at the time of the loss, a part only of the outward cargo has been discharged and bartered, and only part of the homeward cargo has been shipped,—the assured on freight, for the homeward voyage, can only recover for the freight of the goods actually on board, whether under an open or a valued policy.[4]

But, if the freight has been contracted for, and the cargo, or part of it, has been shipped, or is ready for shipping, and the ship has begun, or is ready to begin, the voyage, or to receive the cargo so contracted for, but is lost by a peril assured against,—the assured on freight can recover from the underwriters on freight, the amount of freight, which would otherwise have been earned.

Thus freight was assured "at and from Dominica, and all or any of the West India Islands (Jamaica and St. Domingo excepted), to London;" and, having discharged as much of her outward cargo as she could with safety, before taking in any part of her homeward cargo, *which had been purchased by the charterer's agents and was ready to be shipped at Dominica, but, before taking in any part of this homeward cargo*, the ship was captured:—it was held, that, as the voyage in which the freight was to be carried, commenced under the charter-party when the ship sailed from London, the assured was entitled to recover the whole amount of the policy on the homeward freight, though none of the goods had, at the time of the loss, been actually shipped on board for the homeward voyage.[5] Again, a ship was chartered out and home, to load for a full cargo of produce, to be carried on the *homeward* voyage to London or Liverpool, at the current rate of freight; and, on arriving at the out port, the freighters had provided a full cargo for the ship, which was ready to be shipped, but only about the half of the homeward cargo had been shipped, when the ship was lost by the perils assured against: an assurance had been effected on the homeward freight; and it was held, that, as there was, under the charter-party a beginning of the entire voyage out and home,—the risk had attached on the homeward freight, and, though only half the cargo was on board, the whole of the homeward freight was recoverable from the assurer.[6] As Lawrence, J., said:—"If the voyage has commenced in which the freight is to be earned, and be stopped by any of those perils, the assured will be entitled to recover to the full amount."

In these two cases, freight for the cargo was to be payable under charter-parties; but the agreement for freight, or part freight, "whether written or merely verbal" (spoken), "being legally binding on the parties," can be established by the letters engaging freight. In one case, it was shown *by letters*, that the shipowner had agreed to carry certain goods at a certain

[1] Ware *v.* Miller, *ut sup.*
[2] Truscott *v.* Christie, 2 Brod. and Bing. 324.
[3] Patrick *v.* Eames, 3 Camp 411.
[4] Forbes *v* Cowie, 1 Camp 520; Forbes *v.* Aspinall, 13 East, 323.
[5] Horncastle *v.* Suart, 7 East, 404.
[6] Davidson *v.* Willasey, 1 M. and S. 312.

freight, and to fit up his vessel for the accommodation of a certain number of invalids at a fixed rate of passage-money; and he assured freight and passage-money by his ship on her homeward voyage, *at and from* Madras, &c., to the United Kingdom,—the requisite alterations were making, and the greater part of the cargo, and water for 100 invalids, had been shipped; but, before these alterations were finished, or any invalids had embarked, the ship was driven from her moorings and disabled:—it was held, that, as the shipowner had begun to carry into effect his part of the contract, when prevented by the perils of the seas, he was entitled to his assurance.[1] The like decision was given in an action upon a policy on freight, "at and from Calcutta or any port or place on the Coromandel Coast to any port or place at Bourbon," when the vessel was undergoing repairs at Coringa on the Coromandel Coast, preparatory to receiving a full cargo, the conveyance of which had been *verbally* contracted for, and which was at a place about seven miles distant, ready to be put on board; but, in getting the ship out of dock and afloat in the river, she was so much injured by the perils assured against, as to become a total wreck:—it was held, that, at the time of the loss, the interest of the assured had commenced, and the policy had attached, and he was entitled to recover for a total loss of freight.[2]

Freight can be assured for a part as well as the whole of a voyage,[3] and freight may be assured by a *time* policy, though it cannot be earned until after the time for which it is assured.[4] But freight must be assured *as freight;* and a general assurance on freight covers money advanced by the freighter to account of the freight,—as forehand freight,—if it distinctly appears, that it has been specially advanced *as freight,*[5] and not merely as money for the ship's use, or required to pay port charges, &c.; for, then, such sums require to be specially assured as having been thus advanced.[6]

Dead freight, or a sum to be paid the shipowner, at all events, in case the vessel be not permitted to load, is also assurable, by the charterer, to the amount of the sum he has so agreed to pay.[7] And, therefore, where a vessel was chartered from a port in this country, to a foreign port, under a condition, that, if she was not permitted to unload the outward cargo, or load a return cargo, she was to be at liberty to return to her port of lading, and, on her arrival, the freighters were to pay a certain sum as dead freight;—the chance of paying this dead freight is a legal risk, against which the freighter may be assured.[8]

Profit, or expected profit, and commission on goods, may be legally assured as such;[9] but there must be reasonable and substantial grounds on which this hope or expectation of profit is founded, as the underwriter is not liable, unless the goods, from which profit or commission was to arise, have been shipped and lost by a peril assured against;[10] and it has been held, that the profits expected on a cargo of goods, to be employed in the African trade, can be assured.[11] But the assured must show that the goods were actually on board, and were lost by the perils of the sea;[12] and that,

1 Truscott *v.* Christie, 2 Brod. and Bing. 324.
2 De Vaux *v.* l'Anson, 5 Bing. *n. c.* 519.
3 Taylor *v.* Wilson, 15 East, 324.
4 Michael *v.* Gillespy, 3 Jur. *n. s.* 1219.
5 De Silvalle *v.* Kendall, 4 M. and S. 37; Ellis *v.* Lafone, 8 W. H. and G. 546.
6 Manfield *v.* Maitland, 4 B. and C. 582; Winter *v.* Haldimand, 3 B. and Ad. 582.
7 1 Arn. 259.
8 Puller *v.* Staniforth, 11 East, 232.
9 2 Park, 563; Mar. 74.
10 Cope *v.* Reynolds, 5 Scott, *n. s.* 642.
11 Barclay *v.* Cousins, 2 East, 544.
12 Ro. Ex. Ass. Co. *v.* M'Swiney, 14 Jur. 398.

if the goods had come to market, there would have been a profit.[1] And, where a policy was effected on the commission expected to arise upon the sale of produce *expected* to be shipped at Jamaica, and no cargo appeared to have been ready, it was held, that there was no assurable interest on the commission.[2]

Loans on bottomry or respondentia can be assured *as such*, but the lender can only assure the amount of the sum lent, the payment of which must, by the instrument of security, be made to depend on the safe arrival of the ship;[3] and the borrower on the ship or goods has an assurable interest on the value above the sum lent.[4] The policy on a loan, either on bottomry or respondentia, must be expressly stated to be on such; and, under a general assurance on *goods*, the assured cannot recover for money lent on bottomry or respondentia;[5] and, although a mortgagee may assure the full value of the ship, yet he will not be entitled to recover more than the mortgage sum, whatever may have been the sum assured, unless he prove, that he intended to cover the interest both of himself and of the mortgager.[6]

II.—WAGER POLICIES.

Assurance ought truly to be a contract for indemnification (free from loss) against a real and actual pecuniary loss, which the assured has really and actually sustained, and such assurance ought not to be converted into a positive gain, where the assurance has been effected against a supposed or imaginary loss, from which the assured can sustain no real or pecuniary injury; and therefore, where a policy is effected, without the assured having any interest in the subject-matter of the assurance, the fundamental character of an assurance is awanting, and it is called a gaming or wager policy.

For the purpose of preventing these, the Act 19 Geo. II., cap. 37, was passed, the preamble of which recites, "That the making of insurances, interest or no interest, or without further proof of interest than the policy, hath been productive of many pernicious practices," and "by introducing a mischievous kind of gaming, under pretence of insuring against the risk on shipping and fair trade, the institution and laudable design of making insurance hath been perverted, and that which was intended for the encouragement of trade and navigation, hath in many instances become hurtful and destructive to the same;" and, therefore, it enacts (sec. 1), "That no insurance shall be made on any ship or ships belonging to His Majesty, or any of his subjects, or any goods or effects laden on board such ships, *interest or no interest, or without further proof of interest than the policy, or by way of gaming or wagering, or without benefit of salvage to the insurer*, and that every such insurance shall be void."

Under this section, it has been held, that an assurance upon goods, "the loss to be paid, in case the ship did not arrive at her port of destination, and without further proof of interest than the policy, warranted free from average, and without benefit of salvage,"—the assured having an interest in the cargo, but not in the ship,—was a wager policy, and was void.[7] And,

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[1] Hodgson *v.* Glover, 6 East, 316.
[2] Knox *v.* Wood, 1 Camp. 543.
[3] Stainbank *v.* Shèpard, 17 Jur. 1032.
[4] Mar. 82.
[5] Mar. 256; 1 Park, 7.
[6] Irving *v.* Richardson, 2 B. and Ad. 193.
[7] Kemp *v.* Vigne, 1 T. R. 304.

where the goods assured were and should be valued at five tierces of coffee, valued at £27 per tierce, say £135, *the policy to be sufficient proof of interest*:—it was held, that this policy was void under the Act, as amounting to an assurance, interest or no interest.[1] And an assurance "on profit on cotton, say 150 bales, said profits valued at £350, and, in case of loss or accident, the said policy to be considered *a sufficient proof of interest, and said policy warranted free from average*, and without benefit of salvage, that is, should the vessel, from any cause whatever, be unable to bring on her cargo, then a total loss is to be paid," is a policy on goods within section 1, and is therefore void.[2]

But a valued policy is not a wager policy, nor void under the statute, only the assured must prove his interest in the subject assured; and, in the case of a total loss, and no fraud, the assured does not require to prove the value of the subject assured, but he recovers according to the value in the policy.[3] As, where a ship was assured, valued at £2000, and, in consequence of damage from perils of the sea, was found not worth repairing:—it was held, that this was a total loss, and that, therefore, the assured was entitled to recover the sum at which the vessel was valued in the policy.[4] And, in the case of a total loss, it was held, that a policy on "goods valued at £1400," is a valued policy, without stating the particulars of the goods valued.[5]

In case of a partial loss, however, although the valuation in the policy is not to be disregarded, the assured must prove the extent and true amount of the loss, otherwise every partial loss must be deemed a total one, or there could be no loss, unless it be a total loss.[6] When the valuation is made without fraud, it should be the criterion by which to ascertain the amount of the partial loss, according to the proportion in which this assured subject bears to the whole, and is proved to have been damaged, so as thereby to fix the percentage of the assured value, which the underwriter has to pay as the amount of the partial loss; but, in a policy on goods, it is advisable to express the value of each kind separately, which prevents the necessity of any proof as to the value of the damaged article.[7]

Where the goods are fraudulently overvalued, or where the value of the subject assured far exceeds the interest of the assured, or the policy dispenses with all proof of interest, the policy will be entirely vitiated, and it will be deemed an assurance, interest or no interest, and, as such, void under the statute.[8]

If the policy has been made with a stipulation, that the assurance is to be "as may hereafter be declared and valued," the declaration of interest, containing a specification of the things assured, with their value, must, in order to be available, be either written on the policy, or communicated to the underwriters, or some one on their behalf, before intelligence is received of a loss; but the making of this specification is not a condition precedent: the assured may, by duly declaring and valuing *before a loss*, make the policy a valued policy, but, if he do not, it is an open policy, and the assured must prove his interest and the value.[9]

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1 Murphy *v.* Bell, 4 Bing. 567.
2 Smith *v.* Reynolds, 1 H. and N. 221.
3 Mar. 229; 1 Arn. 283.
4 Allan *v.* Sugrue, 8 B. and C. 561.
5 Franco *v.* Natusch, 1 M. and W. 561.
6 Mar. 374; 2 Arn. 953.
7 Mar. 500; 1 Arn. 304, 320.
8 Haig *v.* De la Cour, 3 Camp. 319.
9 Harman *v.* Kingston, 3 Camp. 150.

Upon a valued policy, the underwriters are not deprived of the benefit of salvage.[1]

III.—RE-ASSURANCE.

Formerly re-assurances were prohibited by statute 19 Geo. II., cap. 37, but the prohibition having been removed,[2] an underwriter may now protect himself from risks which he may have incautiously undertaken, or may be afraid to run, by effecting on his own account a re-assurance on the same risks, so as to render the re-assurers liable to him in the event of a loss, to the amount of the re-assurance.[3]

A re-insurance is a "sea insurance" within the meaning of 30 Vict., cap. 23 (sec. 4). It must, therefore, be made by means of a policy containing the particulars required by section 7 of that act. (See *post*, POLICY.)

A re-insurance in no way affects the original assured, between whom and the re-insurer there is no privity whatever.[4] But a re-insurer, who refuses to pay a loss, and insists upon the original insurer contesting the claim with the original assured, may become liable to pay to the former the costs of the action.[5]

The assurance of the solvency of an underwriter is not practised in this country, either because it is not an assurable interest, or because such an assurance would be deemed a wager policy, or because the same end can be more effectually attained by a double assurance.[6]

IV.—DOUBLE ASSURANCE.

It is double assurance when the assured makes two assurances on the same risk and for the same interest, and this differs from re-assurance, in its being made by the assured with the view of receiving a double satisfaction, or two sums in place of one, for the same loss. This double assurance is not in the nature of a re-assurance, and is not void; but, in law, the policies are considered as only making one assurance, and they are good, to the extent of the actual value of the subject assured or put in risk, and no more.[7]

The assured, however, can only recover the real amount of his loss, although he may pursue any, or all, of the underwriters for payment of this loss; and, among themselves, the underwriters are only bound to contribute their proportions of the loss, according to the sums assured with each; or, should he recover under one of the policies only, the underwriters on it may recover a rateable proportion from the other underwriters; or, should the assured recover more than the value of his interest, the underwriters who pay can recover from him the sums overpaid.[8]

Thus, where the assured was interested in a vessel, as mortgagee, to the extent of £900, and he assured £2000 with one company on the vessel valued at £3000, and with another company, £1700, of both of which he received the amount:—in an action by the former company, for repayment of their proportion of the excess above the £3000, it was proved, that the

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1 Forbes *v.* Aspinall, 13 East, 323.
2 27 and 28 Vict., cap. 56, sec. 1, and 30 Vict., cap. 23, sec. 3.
3 Arn. 4th ed. p. 93.
4 Emerigon, cap. 8, sec. 14, p. 252.
5 Joyce *v.* The Realm Co., L. R. 7 Q. B. 580.
6 Mar. 102; 2 Park, 599.
7 Mar. 103; 2 Park, 600; 1 Arn. 292.
8 Mar. 103; 1 Arn. 293.

ship was really worth more than £3700, the sum received on the two policies; but, it was held, that the same valuation being in both policies, it was conclusive of the value against the assured, and that being only a mortgagee, his interest could not extend beyond his debt, so that, at least, he was bound to repay the sum pursued for.[1]

It is no defence, however, to an action on a valued policy, that the assured has received the amount of the valuation from the underwriter on another policy, if, in fact, the value of the thing assured exceeded that sum; as, where a party assured his ship, valued at £8000 for £6000, and, by the policy in question, valued it at £6000, but only £600 were subscribed; the vessel was wrecked, and, the £6000 in the first policy were paid:—in an action for the £600 in the second policy, evidence was given of the ship being worth £8000; and it was held, that the valuation was only conclusive in settling a loss between the assured and the underwriters on *that* policy, without considering what had been transacted between the assured and third persons; and that, though the assured could not, on the whole, recover more than the real value of the thing assured, yet, it was not enough for the underwriters on a policy to show, that the assured had recovered from some other person, the value in another policy, unless it amounted to a complete indemnity.[2] But, a shipowner having, *before* his bankruptcy, assured his ship, valued at £2500, and, on his bankruptcy, the official assignee having made an assurance upon the same ship and goods,—the risk and interest and amount being the same,—and a loss having happened, and the assurers on the second policy having paid that £2500, as the agreed indemnity for the loss,—and which was a full indemnity:—it was held, that this was a good answer to an action by the creditor's assignee on the first policy.[3]

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[1] Irving *v.* Richardson, 2 B. and Ad. 193.
[2] Bousfield *v.* Barnes, 4 Camp. 228.
[3] Morgan *v.* Price, 4 W. H. and G. 615.

V.—OF THE POLICY.

The contract of assurance can only be made by means of an instrument called a policy, wherein are specified the particular risk or adventure, the names of the subscribers or underwriters, and the sum or sums insured. The omission of any of these particulars will render the contract null and void (30 Vict., cap. 23, sec. 7).

No policy can legally be made for any *time* exceeding twelve months (*ibid.*, sec. 8).

Policies are either *open* or *valued*. In an *open* policy, the value of the interest of the assured is not mentioned, but is left to be declared and ascertained afterwards should a loss happen. In a *valued* policy, the ship, goods, freight, or profit, are assured at a precise sum, as their value; and this value is held as if the parties had admitted it at the trial.[1] By the usage at Lloyd's, liberty is given by the policy "hereafter to declare and value;" but, if no declaration or valuation is endorsed on the policy previous to a loss, it is held as an open policy.[2]

The only distinction between an open and a valued policy, is in the case of a total or a partial loss. In a total loss, the assured must, in an open policy, prove the value; but, in a valued policy, it is not necessary, in a total loss, to prove the actual value, only that the assured had an interest, of which the valuation in the policy fixes the valued amount: but, in the case of a partial loss, there must be the same inquiry into the actual and true amount of the loss, in a valued; as in an open policy.[3]

A valued policy, when fairly made, is distinguished from a wager policy, as being the insurance of a real interest: whereas, in the latter, there is no interest at all. As, however, the value is taken on the representation of the assured, should this value be fraudulent, excessive, or fictitious, the assurer will be at liberty to prove so.[4] And, where there is an allegation of an over-valuation, in a question of seaworthiness, the actual value must be proved.[5]

In a valued policy, the valuation is only conclusive between the assured and the underwriters on that policy, and does not prevent the assured, where there has been no fraud, from recovering the full amount of the value in other policies, provided he does not, on the whole, recover more than the real value of the subject assured.[6] Where the value in the policy is *bonâ fide* meant as an *indemnity*, and the assured proves his interest, there is no very minute inquiry, whether that value be near the true interest of the assured, as the agreed-on value in the policy of the subject assured, is intended to save the expense and trouble which may attend the investigation of value as affecting the *quantum* of the indemnification only, and, where no fraud exists, both parties are bound by it.[7]

The only difference between an open and a valued policy is, as already mentioned, in the case of a total loss, as in the former, the value, which the assured is entitled to recover, must be proved; but, in the latter, the

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[1] Mar. 229; 1 Arn. 307.
[2] Winter *v.* Haldimand, 2 B. and Ad. 649.
[3] Mar. 232; 1 Park, 221.
[4] Mar. 96; 1 Arn. 308.
[5] Taylor *v.* South Devon Ins. Co., 1 D. and L. 91.
[6] Bousfield *v.* Barnes, 4 Camp. 228.
[7] Mar. 232; Young *v.* Turing, 2 Scott, *n. r.* 752.

assurer, by allowing the value to be inserted, has admitted that value to be as stated, and the assured has only to prove his interest. But, in a partial loss, the value in the policy can be no guide to ascertain the damage, and evidence of the actual amount of the loss must then be given, the same as in an open policy.[1] This loss is to be ascertained by the price which the goods bring *at the port of delivery;* and, in a valued policy, the assured pays, according to the extent to which the thing is damaged, a corresponding proportion of the value stated in the policy; but, in an open policy, where there is no valuation, the invoice price, with the addition of all charges and the premium of assurance, is the foundation upon which the loss has to be computed.[2]

[1] Mar. 232; 1 Arn. 304.

[2] 1 Park, 222.

VI.—REQUISITES OF THE POLICY.

I.—NAME OF THE ASSURED OR HIS AGENT.

By 28 Geo. III., cap. 56, sec. 1, it is enacted, that "it shall not be lawful, from and after the passing of the Act, for any person, or persons, to make or effect, or cause to be made or effected, any policy of insurance, upon any ship or vessel, or upon any goods, merchandises, effects, or other property whatsoever, without first inserting, or causing to be inserted, in such policy, the name or names of the usual style and firm of dealing of one or more of the persons interested in such assurance, or without, instead thereof, first inserting the name or names of the usual style and firm of dealing of the consigner or consigners, consignee or consignees, of the goods or property so to be insured; or the name or names of the usual style and firm of dealing of the person or persons residing in Great Britain, who shall receive the orders for, and effect such policy, or of the person or persons who shall give the order or directions to the agent or agents immediately employed to negotiate or effect such policy." And the statute declares, "That every policy made or underwrote, contrary to the true intent and meaning of the Act, shall be null and void to all intents and purposes."

This Act is to be taken, not in its strict literal meaning, but it is to receive a liberal interpretation, according to its true intent and meaning. It has accordingly been held, that, if the name of one effecting the policy be inserted in it, this is a sufficient compliance with the Act, though he be not described therein as agent.[1] And if the policy is effected in name of the brokers, "as agents," it is sufficient that they are agents for that special purpose, though they be not general agents.[2] So, an assurance having been effected by one in his own name, as for and in name of all and every other person, &c., for the benefit of Schroeder, an alien enemy, —a loss happened, and two years afterwards, Schroeder having by letter adopted the assurance—it was held, that the person by whom the assurance was effected, might recover, stating the interest to be in Schroeder.[3]

Although it may not be necessary, in adopting judicial proceedings on the policy, to specify what character the person making the assurance, bears, whether consigner or consignee, &c.; yet, where it is averred, that the person who effected the policy answered a particular description, this averment, though made unnecessarily, must be proved; but, it is not sufficient evidence of this, to produce a letter, directing an assurance to be made, proved to have been received *after* the policy is effected.[4] But where it is alleged, that the policy was effected for the plaintiffs by A, B, C,—this was satisfied by proof that the policy was effected by the firm A & B,—there being two firms, having two partners in common.[5]

Though, in an action for loss under a policy of assurance made in the name and firm of Dewar & Culliford, as agents, as well in their own names as for others,—it was held that the action was wrong, for not stating the Christian names of Dewar & Culliford;[6] yet, a policy effected

1 De Vignier *v.* Swainson, 1 B. and P. 346, *n.*
2 Bell *v.* Gilson, 1 B. and P. 345.
3 Hagedorn *v.* Oliverson, 2 M. and S. 485.
4 Bell *v.* Janson, 1 M. S. 202.
5 Dickson *v.* Lodge, 1 Stark, 225.
6 Sturge *v.* Hahn, 4 W. H. and G. 646.

by a broker *as agent*, was held a sufficient compliance with the statute, without the real parties being named therein.[1]

If the part-owners of a ship are *in partnership*, generally, an order to assure given by one of them, renders all liable;[2] but one part-owner cannot assure the whole ship, or the separate shares of his co-owners, nor even a ship's husband, without express authority from each individual owner, unless his doing so be approved of, and the assurance be adopted by the owners.[3] It has been held, that, when part-owners had authorised their co-owners to assure the whole vessel, and had afterwards assigned their interest in the ship's freight to third parties, but these third parties gave no express notice of their assignment,—the co-owners were entitled to continue the assurance of the vessel, and to deduct the charges of the assurance from the freight.[4]

If the consignee of goods pledges the bill of lading with another, as a security for advances made by him, and, upon an agreement, that the consignee shall effect an assurance on the goods, for the benefit of the pledgee, "on account of whom it might concern," and deposit the policy with him, —the pledgee may sue on the policy in his own name.[5]

By general rule, the judges of the courts at Westminster have directed that, in actions on policies of assurance, the interest of the assured may be averred thus:—"That A, B, C, and D (or some one of them) were or was interested," &c.; and it may be also averred,—"that the said assurance was made for the use and benefit, and on the account, of the person or persons so interested."[6]

II.—NAMES OF THE SHIP AND MASTER.

In a policy on a ship, it is necessary by the law and usage of merchants, for the identification of the vessel assured, and for determining the bottom to which the risk attaches, to insert the names of the ship and master, as the risk may be increased or diminished according to the strength and sufficiency of the ship, and the skill, knowledge, and ability of the master. But, in every policy, there are added the words, "or by whatsoever other name or names the same ship, or the master thereof, is or shall be named." So that an assurance will not be destroyed by a mistake in the name of the ship or master, provided the identity of the ship be proved, and there is no fraud.[7]

As, where the policy described the assurance to be—"on board the good ship called the *American President*,"—the real name being *The President*, —but the broker having been directed to assure the ship *The President*, and to describe her an American ship, had described her as above:—it was held, that the whole was to be taken as her name, and not as a warranty of her being an American ship, called *The President*; and that it was no variance, that the real name was *The President*,—the identity being proved; and there being no fraud in the transaction.[8]

An assurance on goods on board "ship or ships" is good, provided the

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1 Mellish *v.* Bell, 15 East, 40.
2 Hooper *v.* Lusby, 4 Camp. 66.
3 Robinson *v.* Gleadow, 2 Scott, 250.
4 Lindsay *v.* Gibbs, 5 Jur. *n. s.* 376.
5 Sutherland *v.* Pratt, 11 M. and W. 296.
6 El. and Bl. Ap. lxxx.
7 1 Park, 19; 1 Arn. 170.
8 Le Mesurier *v.* Vaughan, 6 East, 382; see also Ionides *v.* Pacific Co., L R. 7 Q. B. 517.

identity of the ship, in which the goods are, and on which the risk is taken, be proved; and, though the policy state, by mistake, the goods to be shipped on board a wrong ship, this declaration, though received by the underwriters, being without fraud or prejudice to them, may be corrected without consent of the underwriters, and without voiding the policy.[1] An assurance of this kind *on goods* is just a representation, that the assured does not know in what vessel the goods assured are to be brought;[2] but, although this mode of assuring is practised, and permitted for the convenience of the assured, yet, it is an exception to the general rule above given, and it ought not to be allowed, unless in those cases where the assured *on the goods* have no knowledge of the particular ship which is to bring them.[3]

Sometimes assurance is effected generally, "upon ship or ships," expected from a certain place; and, though a wrong name of the ship be entered in the policy, by mistake, this will not vitiate the assurance, provided the identity of the ship intended be established, and there has been no fraud, because the policies have the printed words, "or by whatsoever name the ship should be called," which are not confined to the case of the ship having another name than that inserted in the policy. The name of the master ought also to be inserted, as his character and known abilities may be material circumstances in calculating the risk; and, although the following words are always added, "or whosoever shall go master in the said ship;" yet, this does not entitle the owner, wantonly and unnecessarily, to change the master and the person.[4]

Under the word "*furniture*" are comprehended the *provisions* put on board the ship, when she sails, for the use of the crew on the voyage, and these are protected by an assurance on the "body, tackle, apparel, ordinance, furniture, &c., of the ship, in the common printed form, and also the ship's stores and tackle.[5]

In whaling voyages, the word *outfit* has a peculiar signification, and means the fishing stores,—*i.e.*, all the instruments and apparatus necessary for taking the fish, and for preparing and bringing home their produce. But these fishing stores are protected by the general words, "body, tackle, apparel of the ship."[6]

The "boat" is included by name, and evidence of a usage will not be admitted to show, that underwriters do not pay for boats slung outside the ship upon the quarters.[7]

III.—SUBJECT ASSURED.

It must be stated in the policy whether it is the ship, goods, freight, profit, or commission, which is assured. If it is a mortgagee or creditor, by loan, bottomry, or respondentia, who is assured, that must also be specially mentioned in the policy.[8]

An assurance upon goods is commonly made "upon any kind of goods or merchandise;" and, although it is not absolutely necessary to enumerate the particulars of which the cargo may consist, as the underwriters are protected, by the memorandum, from partial losses on certain enumerated

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1 Robinson *v.* Touray, 3 Camp. 158.
2 Lynch *v.* Hamilton, 3 Taunt. 37.
3 Mar. 254; 1 Arn. 173.
4 1 Arn. 175, 182.
5 Brough *v.* Whitmore, 4 T. R. 206.
6 Gale *v.* Lawrie, 5 B. and C. 156.
7 Blacket *v.* Ro. Ex. Ass. Co., 2 C. and J. 244.
8 1 Park, 10; Mar. 255.

articles of a perishable nature, and easily liable to corruption, and on small partial losses on all other articles under a certain per cent., yet, where the goods can be enumerated by their marks, numbers, packages, &c., that ought to be done.[1]

If, however, the policy is underwritten "on goods and merchandise" generally, without specifying any particular goods, the underwriter will be liable, upon the assured proving his interest, though no article be specified; for, on an assurance "on goods," it is sufficient, in general, if the subject-matter of the assurance be rightly described, and the particular interest of the assured need not be specified.[2] And if the policy has been upon "ship and goods," in common form, and there is a written memorandum that it is on goods generally, the effect will be the same as if goods only had been mentioned.[3]

When the policy is on goods, "as may hereafter be declared," it is sufficient, if a declaration of interest containing a specification of the goods assured be either made on the policy, or communicated to the underwriters, or to some one on their behalf, *before* the assured receive intelligence of a loss. This, however, is not a condition precedent of the policy, but the assured may, by declaring and valuing any time *before* a loss, make the policy a valued one; and, if he do not, he must prove his interest and the value.[4] Where a wrong declaration has been made, by *bonâ fide* mistake, it may, by virtue of the usage of merchants, recognised by the courts of law, be altered even after the loss is known.[5]

A general policy on *goods* will not cover the ship's provisions nor the master's clothes; nor are the jewels and ornaments belonging to the persons of passengers considered as part of the cargo; neither are goods laden upon deck included under a policy on goods, unless where they are specially described as such, and a premium paid corresponding to the greater danger to which they are exposed.[6] But although, in general, goods on deck are held not to be within a general policy on goods, yet, in an assurance upon carboys of vitriol, carefully lashed upon deck,—that being the usual place for this commodity,—the underwriters were held liable, without their being informed of this practice,—it being held, that they were bound to know the usage.[7]

In an assurance on "the body of the ship, tackle, apparel, ordnance, munition, boat, and other furniture of the ship,"—a boat slung at davits on the quarter was lost, and it being admitted that it was customary, on such voyages, to carry boats in that manner:—it was held, that evidence of the usage of underwriters not to pay for losses of boats so slung was inadmissible.[8]

Bonds of bottomry and respondentia, and mortgages, can also be the subjects of assurance, only this interest must be particularly expressed in the policy; for, under a general assurance on *goods*, such securities will not be covered.[9] And although a mortgagee should assure the full value of the vessel, he is only entitled to recover to the extent of his own interest,

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1 1 Park, 22; Mar. 257.
2 Crowly *v.* Cohen, 3 B. and Ad. 478.
3 Haughton *v.* Ewbank, 4 Camp. 89.
4 *Per* Lord Ellenborough, in Thomson *v.* Kingston, 3 Camp. 150.
5 Stephens *v.* Australasian Ass. Co., L. R. 8 C. P. 18.
6 1 Park, 241; 1 Arn. 213.
7 Da Costa *v.* Edmonds, 4 Camp. 142.
8 Blackett *v.* Ro. Ex. Ass. Co., 2 Tyrwh. 266.
9 1 Park, 7; Mar. 256; 1 Arn. 223.

unless he can prove that he also intended to cover the interest of the mortgager or owner.[1]

IV.—THE VOYAGE ASSURED, AND THE COMMENCEMENT AND TERMINATION OF THE RISK.

The voyage assured must be truly and accurately set forth in the policy,—the port or place of the ship's departure—the time or place when the risk commences—the port or place of the voyage's termination—and the place or time when the risk ends, whether the policy is on ship or goods.[2] The duration of the risk, in an assurance on freight, is the same as in a policy on the goods, for which that freight is to be paid.[3] The destination of the vessel must also be properly specified, otherwise the policy is void for uncertainty.[4]

On ship and freight, the common form is, "at and from" a certain place, and the policy attaches so soon as the vessel is in a situation, at the port of lading, to take in her cargo; as, in an assurance on freight, "at and from Algoa Bay, or Table Bay, both or either, to London;" the vessel arrived safe at Algoa Bay, but, before the homeward cargo, which was ready, was put on board, a storm arose, and she was lost:—it was held, that the vessel being in a condition to take in her homeward cargo, the assured was entitled to recover.[5] But the vessel must have been at the place of loading, in good safety, before the policy can attach; and, therefore, when a vessel, assured at and from St. Michael's to England, arrived there in distress and after lying at anchor twenty-four hours, was blown out to sea and lost:—it was held, that, as the vessel had not been once at the place in good safety, the policy on the homeward voyage had not attached.[6]

The risk in an assurance upon goods is expressly declared to commence "from the loading thereof on board the ship," and as continuing "until the same be discharged and safely landed;"[7] and this covers the goods during their transit to the shore, and until all the goods are landed.[8] If it is the practice of the port or place to land the goods in boats and shallows, should a loss happen in this being done, the underwriters will be liable, though not informed of the practice. As, where an assurance of goods was from London to Jamaica generally, but the goods were destined to particular places, and, in such cases, the usual course is for the ships to proceed to an adjoining port, and there tranship the cargo in shallops; no information of this was given to the underwriters; but, notwithstanding, they were held liable for the loss occurring after this transhipment.[9] And the assurers are liable for the risk of the goods where it is the usage of the trade to land them in lighters,[10] unless the assured hires the lighter, and takes the goods under his own charge.[11]

Liberty is often given "to touch, stay, trade at," &c., certain ports or places, or at any port or place whatsoever. In the former, if the vessel proceed to any port or place, in the course of the voyage, it must be for some purpose connected with the voyage; but if it is for a purpose wholly unconnected with the voyage, it will be deemed a deviation, and the policy

[1] Irving *v.* Richardson, 2 B. and Ad. 193.
[2] 1 Park, 31; Mar. 260.
[3] Mar. ib.
[4] Mar. ib.; 1 Arn. 336.
[5] Williamson *v.* Innes, 8 Bing. 81.
[6] Parmeter *v.* Cousins, 2 Camp. 235.
[7] Mar. 197; 1 Park, 33.
[8] 1 Arn. 429.
[9] Stewart *v.* Bell, 5 B. and A. 238.
[10] Hurry *v.* Ro. Ex. Ass. Co., 2 B. and P. 430.
[11] Strong *v.* Natally, 1 B. and P. *n. r.* 16.

will be vitiated.[1] As, where an assurance was from Para to New York, with leave to call at all or any of the Windward and Leeward Islands and colonies, on her passage to New York; but the vessel proceeded to two of the Leeward Islands for a purpose wholly unconnected with the voyage: —this was held to be a deviation, and to vitiate the policy.[2]

When the liberty is "to touch, stay, trade at," &c., any ports or "places whatsoever," this liberty must be understood for some purpose connected with and subordinate to the voyage assured, but within the scope of the adventure.[3] As, when a vessel was assured to her *port or ports of loading*, in the Baltic Sea and Gulf of Finland, with liberty to proceed and sail to, and touch and stay at, any ports or places whatsoever, *for all purposes*, particularly at Elsinore; the vessel took out goods for Elsinore, Dantzig, and Pillau, went to Elsinore and landed goods, then to Dantzig and landed some more, and, in going to Pillau, was wrecked:—it was held, that the liberty to touch at any port for all purposes, means only purposes connected with the voyage; that the voyage was to a *loading* port in the Baltic, and if the ship had gone to Elsinore or Dantzig to get a cargo, it would have been a purpose connected with the voyage, and no deviation; but, the going thither for the purpose of landing goods was wholly unconnected with the voyage intended.[4] And where a ship was assured, "at and from London to Berbice, with liberty in the most extensive terms, to touch, stay, and trade at all places," &c.; the vessel arrived with convoy at Madeira, and immediately began to land goods and load wine in exchange; but, before the wine could be got on board, the convoy sailed, and the ship remained at Madeira for a week, and then sailed with several others, which were in the same situation, and was captured on her way to Berbice:—it was held, that the ship, by putting into Madeira, and voluntarily staying behind there for the purpose of trade, had been guilty of a deviation which discharged the underwriters.[5]

If the places are named in the policy, they must be visited in the order described; or, if leave is given to call at certain ports, places, or islands, with some exceptions, the vessel must take the ports as they occur in the course of the voyage,[6] unless leave to take these in another order can be fairly inferred from the terms of the policy. As, a ship having been assured "at and from Liverpool to any port or ports of discharge in China or Manilla, during the ship's stay there for any purposes, and *from thence* to any port or ports of calling or discharge in the United Kingdom,—with liberty to call and stay at all or any ports or places on either side of or at the Cape of Good Hope,"—the ship put into a port in China, but not finding a freight there, she went to a port in Manilla, and was thence proceeding a second time to a port in China, in order to complete her cargo, and thence sail for England, when she was lost:—it was held, that this was not a deviation.[7]

But, under these liberties, the captain cannot alter the regular course of the voyage; and, if the cargo has been substantially discharged or loaded at the vessel's "final port," the assurance is at an end, and the vessel is not protected on a seeking voyage for another cargo.[8] As, where an assurance

1 Mar. 146; 1 Arn. 365.
2 Hammond *v.* Reid, 4 B. and A. 72.
3 Mar. 142; 1 Arn. 373.
4 Solly *v.* Whitmore, 5 B. and A. 45.
5 Williams *v.* Shee, 3 Camp. 469.
6 Marsden *v.* Reid, 3 East, 572.
7 Ashley *v.* Pratt, 1 W. H. and G. 257.
8 Gardner *v.* Senhouse, 3 Taunt. 16.

was "at and from Liverpool to Martinique, and all or any of the Windward and Leeward Islands, with liberty to touch at any ports or places whatsoever, to take on board goods," &c.; the ship arrived at Martinique about 20th May, and the captain disposed of almost all the outward cargo, except a small quantity of lime and bricks, with which he sailed for Antigua,—partly to dispose of the rest of his outward cargo, remaining on board, and partly to seek a homeward cargo,—where he arrived on the 31st, and lay there till 8th July, when she was lost, with the lime and bricks on board, and without the captain having been able to obtain a freight home:—it was held, that the captain had no right to mix up these two objects together, at the risk of the underwriters on the outward cargo, and that they, therefore, were discharged.[1] And where the assurance was on a ship "at and from St. Vincent, Barbadoes, and all or any of the West India Islands, to her port or ports of discharge and loading in the United Kingdom, during her stay there, and thence back to Barbadoes, and all or any of the West India colonies, until she should arrive at her final port of discharge as aforesaid:"—it was held, that the adventure terminated at the place in the West India colonies where she substantially discharged her cargo from the United Kingdom, except some coals and bricks, which were retained for the mere purpose of ballast, and the vessel, when lost, was proceeding elsewhere for a fresh cargo.[2]

If the assurance is to "port or ports," an open roadstead, being the usual place of loading and unloading, in which ships, lying at anchor, take in or discharge their cargoes by boats sent off from the shore, is held to be a port within the meaning of the policy.[3]

To entitle the assured to recover, the vessel must actually sail on the voyage assured; and if she sail on a voyage different from that described in the policy, the underwriters will be discharged;[4] and, therefore, if a vessel be assured from A to B, with leave to call at C, which is not in the course of the voyage from A to B, the policy will not cover the voyage, in the absence of any intention to proceed to B.[5] And where the policy was in very broad terms, "from London to New South Wales, thence to all ports and places in the East Indies or South America, with liberty to proceed and sail to and touch and stay at any ports or places whatsoever, and to take in and discharge goods at all ports and places in the Channel, &c., and wheresoever the ship might proceed to, as well on this as on the other sides of the Capes of Good Hope and Horn, and to sail backwards and forwards, and forwards and backwards;" the vessel arrived at New South Wales, where the master received instructions to go to the East Indies, and not to South America; but he had engaged to carry some passengers to New Zealand, and to bring back one of them to New South Wales, after which he meant to sail to the East Indies; but, in sailing from New Zealand to New South Wales, the ship was lost:—and, in an action on the policy, it was held, that the first stage of the voyage was from London to New South Wales,—the next, either to South America or the East Indies, as to which the option was there to be made, and so the ship to sail either to a port in South America or a port in the East Indies,—that, the voyage to New Zealand, though in the way to South America, was not

[1] Inglis *v.* Vaux, 3 Camp. 437. [2] Moore *v.* Taylor, 1 A. and E. 25.
[3] Cockey *v.* Aitchison, 2 B and A. 460; Gavin *v.* Sea Ins. Co., 4 Bligh, *n. s.* 578.
[4] Mar. 264. [5] Lord *v.* Robinson, 1 D. and L. 11.

a voyage to South America, but a voyage commenced with a destination, back to New South Wales, and thence to the East Indies—and that the words of leave to go to ports and places, and backwards and forwards, and forwards and backwards, must be construed to mean only such ports and places as were in the course of, and having for its object the accomplishment of, the principal voyage assured.[1]

When the vessel has to call at several ports in the course of the voyage, the freight from the port of sailing to any of these ports may be assured, without reference to the ultimate destination of the vessel.[2]

It has been held, that an assurance to any port in the Baltic includes the Gulf of Finland, which, in mercantile contracts, is considered as within the Baltic, though the two seas are treated by geographers as separate and distinct.[3]—See *infra*, OF THE VOYAGE, Chap. VII.

V.—THE PERILS ASSURED AGAINST.

The risks for which the assurers are liable are stated in the policy to be "of the seas, men-of-war, fire, enemies, pirates, robbers, thieves, jettisons, letters of mart and counter-mart, surprisals, takings at sea, arrests and detainments of all kings, princes, and peoples, of what nation, condition, or quality soever, barratry of the master and mariners, and of all other perils, losses, and misfortunes, that have or shall come to the hurt or detriment of the said goods, and merchandises, and ship, &c., or any part thereof, without prejudice to the assurance." And the memorandum attached to the policy is thus :—"N.B.—Corn, fish, salt, and seed, are warranted free from average, unless general, or the ship be stranded; sugar, rum, tobacco, hemp, flax, hides, and skins, are warranted free from average under five per cent.; and all other goods, also the ship and freight, are warranted free from average under three per cent., unless general, or the ship be stranded."

The word "*corn*" comprehends all kinds of grain, and also peas, beans, and malt, but not rice;—the term "*salt*" does not include saltpetre. In some memorandums, the word "*rum*" is not inserted among articles warranted free from average under five per cent. "Freight" is also sometimes omitted from articles upon which there shall be no partial loss under three per cent.; and, in some policies, the words "or the ship be stranded" are omitted.[4]

The words "lost or not lost" are inserted in all the policies in this country, by which the assurers undertake the risk, not only of any future loss, but of any loss that may have already happened, provided there be no fraud.[5]—See *infra*, OF THE RISKS OR PERILS ASSURED AGAINST, Chap. IX.

VI.—POWERS OF THE ASSURED IN CASE OF LOSS.

The policy authorises the assured, "their factors, servants, and assigns, to sue, labour, and travel for, in and about the defence, safeguard, and recovery of the said goods, merchandise, and ship, &c., or any part thereof, to the charges whereof we, the insurers, will contribute."

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1 Bottomley *v.* Bovill, 5 B. and C. 210.
2 Taylor *v.* Wilson, 15 East, 324.
3 Udhe *v.* Walters, 3 Camp. 16.
4 Mar. 169; 2 Arn. 853.
5 1 Park, 36; Mar. 287.

Under this clause, the assured is entitled, on a loss or misfortune happening, to employ all necessary means for the preservation, protection, and recovery of the goods, merchandise, or ship assured, at the expense of the assurers.[1]

VII.—THE ASSURER'S PROMISE AND RECEIPT FOR THE PREMIUMS.

By the next clause, the assurers bind themselves to a true performance of the contract to the assured, and acknowledge receipt of the premium or consideration paid by the assured, according to the agreed-on rate per cent.

When the assurance is effected by a broker, the receipt in the policy subscribed by the underwriter is conclusive evidence, in a question between the latter and the assured, and, in the absence of fraud, that he has received the premium; and having accredited the broker with his principal, to the extent of the premium, he cannot, in an action for return of premium, plead that the broker had paid no part of the premium.[2] Nor, in an action by the assured for a loss, can the underwriter set off the premium, which he had never received, but with which he had debited the brokers, and received credit from them in account.[3]

But if there has been collusion between the broker and the assured, or fraud on the part of the latter, he will be liable to the underwriters for the premium, notwithstanding the receipt in the policy.[4]

VIII.—THE DATE OF SUBSCRIPTION.

The date is not inserted in the body of the policy, but each underwriter attaches to his name the day, month, and year of his own subscription. This date is an essential requisite; for, when compared with the dates of facts connected with the policy, or material to be proved, it may tend to discover whether there is any reason to suspect fraud or concealment on the part of the assured.[5] After the date of his subscription, he inserts, in words—not in figures—and in his own handwriting, the sum for which he is to be responsible. Although it is not the common practice, yet an underwriter may bind himself to pay the value, or his proportion of the value, of the subject assured, although no value has been fixed in the policy.[6]

IX.—THE STAMP.

By the 30 and 31 Vict., cap. 23, sec. 9, it is provided that no policy of marine insurance shall be available either at law or in equity unless it is stamped according to Schedule B of that Act; but any policy of mutual insurance having a stamp already impressed may, if required, be stamped with an additional stamp, providing it is not already underwritten to an amount exceeding the sum which the previously impressed stamp will warrant; and any policy made abroad, and chargeable with duty by virtue of 28 and 29 Vict., cap. 96, sec. 15, may be stamped within the time specified by that Act.

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[1] Mar. 268; 1 Arn. 35.
[2] Dalziell *v.* Mair, 1 Camp. 532.
[3] De Gaminde *v.* Pigou, 4 Taunt. 246.
[4] Foy *v.* Bell, 3 Taunt. 493; Mavor *v.* Simeon, 3 Taunt. 497.
[5] Mar. 270; 1 Park, 38.
[6] Dowell *v.* Moon, 4 Camp. 166.

Schedule B of 30 and 31 Vict., cap. 23, containing the stamp duties on policies of sea-insurance, is as follows :—

	s.	d.
For every policy of sea-insurance for or upon any voyage :		
In respect of every full sum of £100, and in respect of any fractional part of £100, thereby insured, ...	0	3
For every policy of sea-insurance for time :		
In respect of every full sum of £100, and in respect of any fractional part of £100, thereby insured :		
Where the insurance shall be made for any time not exceeding six months, ...	0	3
Where the insurance shall be made for any time exceeding six months, and not exceeding twelve months, .	0	6

But if the separate and distinct interests of two or more persons be insured by one policy for a voyage or for time, then the duty of threepence, or the duty of threepence or sixpence, as the case may be, is to be charged thereon in respect of every full sum of £100, and every fractional part of £100, thereby insured upon any separate or distinct interest.

The stringent provisions of the foregoing enactment having been found to work gross hardship, especially on persons assured who had sustained a loss after the issuing of a slip and before the stamp policy had been procured, the Legislature has, by a recent statute, provided : (1.) That a policy of sea-insurance, by which the separate and distinct interests of two or more persons are insured, if stamped in respect of the aggregate of such interests, but not duly stamped in respect of each of such interests, may be stamped with an additional stamp or stamps at any time within one month after the last risk has been declared ; and (2.) That section 16 of the Stamp Act, 1870, is to apply to a policy of sea-insurance, which, for the purposes of that section, is to be an instrument which may legally be stamped *after the execution thereof*, upon payment of a penalty of £100 (39 and 40 Vict., cap. 6, secs. 1, 2).

Where any sea-insurance is made for a voyage and also for time, or to extend to or cover any time beyond twenty-four hours after the ship arrives at her destination and is there moored at anchor, the policy is chargeable with duty as a policy for a voyage, and also with duty as a policy for time (30 and 31 Vict., cap. 23, sec. 11).

If carriers of goods take upon themselves sea-risks in consideration of additional freight or otherwise, the contract must be expressed in a policy (sec. 12).

Penalties are imposed on persons assuring or effecting insurances without the use of the proper stamps (secs. 13, 14).

And a broker cannot recover his charges where the policy has not been duly stamped (sec. 16).

The value of spoiled stamps may be recovered from the Commissioners of Inland Revenue in pursuance of 33 and 34 Vict., cap. 98.

X.—WHAT ALTERATION OF THE POLICY MAY BE MADE, AND HOW FAR IT NECESSITATES A NEW STAMP.

It is the general rule that, when a policy has once been filled up and underwritten, it cannot be altered in any material part unless by consent

of all. Thus, where the destination,[1] or the specified day of sailing,[2] or the subject-matter of the insurance,[3] has been altered in the policy without the consent of the underwriters, the contract has been avoided. So also where an additional place of call has been inserted.[4] But if the alteration is immaterial, it will not affect the contract: as where the words "and trade" were added to a policy giving leave to "touch and stay, sell, barter, and exchange."[5]

There is nothing in the Stamp Act prohibiting the making of alterations in the terms or conditions of a policy after the same has been underwritten; but if the alteration be made after notice of the determination of the risk originally insured; or if it prolong the time covered by the policy beyond six months, in the case of a policy made for a less period than six months, or beyond the period allowed by the Stamp Act, in the case of a policy made for a greater period than six months; or if the articles insured do not remain the property of the same person; or if any additional sum is insured,—then the alteration necessitates a fresh stamp.[6]

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[1] Laird *v.* Robertson, 4 Br. P. C. 488; Campbell *v.* Christie, 2 Stark, 64.
[2] Fairlie *v.* Christie, 7 Taunt. 416.
[3] Langhorn *v.* Cologan, 4 Taunt. 330.
[4] Forshaw *v.* Chabert, 3 B. and B. 158.
[5] Sanderson *v.* M'Callum, 4 Moore, 5.
[6] 30 Vict., cap. 23, sec. 10.

VII.—WARRANTIES.

A warranty is a stipulation, in the nature of an absolute condition, that something is, shall be done, or happen, as to the subject of assurance, which must be strictly and literally performed by the assured, before he can derive any benefit from the policy.[1]

Warranties are either *implied* (*i.e.*, understood, but not stated), or *express.* The former are understood in all contracts of assurance, and necessarily enter into the nature of that contract; as, that the vessel is seaworthy, that the voyage is lawful, and that it shall be performed in the usual course, and without any wilful deviation. An express warranty is a particular stipulation or promise introduced into the contract by the agreement of parties; as, that the vessel shall sail by a certain day, or was safe on a certain day, &c.[2]

Warranties are also either *affirmative*,—where some express affirmation or assurance is made by the assured, as that the vessel sailed, or was well, on a certain day, &c.; or *promissory*,—where the assured engages that some condition shall be performed, as that the vessel shall sail by a certain day, shall be manned by a certain number of men, &c.[3]

It is the rule that the assured need make no representation or statement to the underwriters of anything he, the assured, warrants;[4] as, where a vessel had been leaky on the outward voyage, but the leak had been stopped before sailing on the voyage assured:—it was held, that, as it is a condition in every policy that the ship is seaworthy, there was no necessity for any representation as to that.[5] But if information be particularly required, the assured is bound to state truly what he knows.

I.—OF IMPLIED WARRANTIES.

Implied warranties relate, either to the ship,—that she shall be seaworthy—when she may be changed—and her conduct on the voyage; or to the voyage itself,—its illegality—and deviation from it.

I.—OF THE SHIP.

1.—*Of the Seaworthiness of the Ship.*

It is an implied condition in every *voyage* policy of assurance, whether on ship or goods, that the vessel shall be tight, stanch, and strong for the voyage—that she shall be manned with a proper master and crew—that she shall be well found and sufficiently rigged—properly provided with all necessary stores—and in all respects fitted for the intended voyage;—as, in a voyage policy, *the law implies* a condition of seaworthiness of the ship at the time of the commencement of the risk, as stated in the policy; but, in a *time* policy,—*i.e.*, an insurance for a certain and specified period of time, as from a certain expressed day, or a certain hour of that day, to another future and specified day or hour of that day,—there is no *implied*

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1 1 Park, 660; Mar. 279.
2 Mar. 279; 2 Park, 661.
3 Mar. 279.
4 Mar. 346.
5 Shoolbred *v.* Nutt, 1 Park, 492.

condition of seaworthiness when the policy attaches, nor when the ship sails on her voyage, nor when the ship is lying, when the policy is intended to attach, outward-bound in a British port; and this holds whether the ship be at sea, or abroad, or in a British port, and whether the ship's seaworthiness or unseaworthiness was known or was not known to the assured.[1]

These decisions have entirely reversed the law as hitherto received and acted on, that, *in time policies*, as well as in voyage policies, it was a condition distinctly understood, though not expressed, that the ship was seaworthy at the time the risk attached; but from these decisions it is now necessary for the insurer in *time policies* to make an express condition, appearing on the face of the policy, that, at the commencement of the risk, the ship was seaworthy.

But, *in voyage policies*, there is an implied condition or warranty of seaworthiness, as it is now a well-established rule of law, that, *in an assurance for a voyage*, either on ship, or on goods, or on freight, a warranty of seaworthiness for the voyage of the ship assured, or of the ship in which the goods are carried, is to be implied; and seaworthiness being a term that has relation to the then actual state of the ship, and her capability of performing the voyage assured, and what, in each instance, is a question of fact,—there is no exception to this rule in an assurance on salvage,—*i.e.*, on ship and cargo abandoned by the crew and taken by salvors into a place of safety,—in respect of the assured's lien for salvage services given,—such a warranty not being excluded:—and under these circumstances, the question is—to what extent the vessel is to be seaworthy; and this depends upon this other question, whether, at the commencement of the voyage, the ship was in such a state as to be reasonably capable of performing it.[2]

It has been held, that, under a voyage policy "at and from," the vessel is protected while she is lying in port, although it is not necessary that the vessel should be completely seaworthy at the time the assurance is effected, provided she be seaworthy at the time of sailing on the voyage insured;[3] but, there being in a time policy no implied warranty of seaworthiness as a continuing obligation upon the assured during the running of the risk, it is no defence to the underwriter, in an action for a total loss by stranding, that at the time of the loss the vessel was unseaworthy by the insufficiency of her crew, when she sailed from an intermediate port;[4] while, in a voyage policy, there is an implied warranty that the vessel shall be seaworthy,—that is, in a fit state as to repairs, equipment, and crew, and in all other respects, so as to encounter ordinary perils; but if the voyage requires, at different stages, a different complement of men and equipment,—then, it is enough that the state of the ship is equal to the then risk. There is no warranty by the assured that the vessel shall continue seaworthy, or that the captain and crew shall do their duty during the voyage, and their misconduct as such is no defence to an action on the policy. In an assurance upon goods, there is a similar implied warranty as to the ship in which they are.[5]

As the warranty of seaworthiness is thus implied in every assurance for a

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[1] Small *v.* Gibson, 4 H. of L. Cases, 353; Thompson *v.* Hopper, 6 El. and Bl. 172; Fawcus *v.* Sarsfield, 5 El. and Bl. 392; Michael *v.* Tredwin, 17 Scott, 551.
[2] Knill *v.* Hooper, 2 H. and N. 277. [3] Oliverson *v.* Loughnan, 2 B. and A. 322.
[4] Jenkins *v.* Heycock, 8 E. F. Moore, 351.
[5] Commercial Marine Company *v.* Namaqua Mining Company, 5 L. T. *n. s.* 504.

voyage, it is not necessary that there should be any communication or representation to the underwriter as to the state of the ship at the time of effecting the policy; but if the underwriter should make inquiry as to the state of the ship, then the person effecting the policy must honestly disclose anything he may know likely to affect the risk; otherwise there would be a material concealment, and the policy would be void, although it might turn out that, in point of fact, the vessel was seaworthy.[1] And if the vessel be seaworthy for a voyage out and home, at the commencement of the risk, the warranty is sufficiently complied with, and the underwriters will be liable, although she becomes otherwise in an hour from that time; but when the inability of the ship to perform her voyage becomes evident, immediately after leaving the port, or in a short time after the risk commences, without any apparent cause of injury, the presumption is, that this inability arises from causes existing before setting sail on her intended voyage, and that she had not then been seaworthy; and in such a case, the burden of proving the seaworthiness is thrown on the assured, and he must show that this inability arose from causes subsequent to the commencement of the voyage.[2] The evidence of carpenters who repaired or surveyed the vessel is not conclusive as to her seaworthiness;[3] but the testimony of a person who has surveyed the vessel abroad, and who cannot attend in this country to give his evidence, may be read, and experienced shipwrights may be called to give their opinion of the vessel's seaworthiness from the facts as stated, though they have not seen the vessel herself.[4]

If the vessel be unseaworthy at the time of sailing, though that may be the effect of decay, or may not be known to the assured, the policy will be void;[5] but if, at the time of sailing, the vessel was unseaworthy, arising from her being overloaded, and if that defect be discovered and remedied, by discharging part of her cargo, before a loss has occurred, and a loss subsequently happen, in no degree attributable to her having been overloaded in the early part of the voyage, the underwriters will be liable. As, where a vessel had taken in a greater cargo than she could carry, and she laboured and strained so much that she had to put back, when the underwriters granted liberty to go into port and discharge part; and having then sailed from that port in a seaworthy state, and a loss having subsequently happened, in no degree attributable to the former overloading, or to her having laboured and strained,—the underwriters were found liable.[6]

With the exception above mentioned, if the vessel is unseaworthy at the time of sailing, neither the innocence nor the ignorance of that fact by the assured, nor any precaution he may subsequently take to render the vessel seaworthy, will be any excuse for a non-compliance with this implied warranty.[7] And under this implied warranty of seaworthiness, the hull of the vessel must not only be seaworthy, but she must also be provided with cables and anchors, and be in a fit state as to repairs, equipments, and crew, and in all other respects fit to encounter the ordinary perils of the voyage assured, at the time of sailing on it. The great principle established by the recent decisions is, that if the crew and equipments be originally sufficient, the assured has done all that he originally contracted to do, and is

1 Haywood *v.* Rodgers, 4 East, 590.
2 Watson *v.* Clark, 1 Dow, 344; Anderson *v.* Morice, L. R. 10 C. P. 58.
3 Parker *v.* Potts, 3 Dow, 23.
4 Beckwith *v.* Sydebotham, 1 Camp. 116.
5 Scougall & Co. *v.* Douglas, 4 Dow, 269.
6 Weir *v.* Aberdein, 2 B. and B. 320.
7 1 Park, 470; Mar. 113; 1 Arn. 653.

not responsible for a subsequent deficiency, occasioned by any neglect or misconduct of the captain or crew; and the assured makes no warranty to the underwriters that the vessel shall continue seaworthy, or that the captain and crew shall do their duty during the voyage; and their negligence or misconduct is no defence to an action on the policy, where the loss has been immediately occasioned by the perils assured against.[1]

Thus, where a vessel had been lengthened, but the new part was not fastened with knees:—it was held, that, for the want of knees, she was not seaworthy for a foreign voyage.[2] And where, on a foreign voyage, a vessel had not any knees, either fore or aft, to support her lower decks, and her state throughout was loose, and at the foreign port she took the ground several times, and on sailing became very leaky, and was found not reparable;—it was held that she was not seaworthy.[3]

Under this implied warranty, it is not only necessary that the hull of the vessel be tight, &c., but she must also be furnished with such sufficient sails, rigging, and ground tackling, as will enable her to encounter the ordinary perils of the sea, and prosecute her voyage with reasonable expedition. Therefore, when the best bower anchor and the cable of the small bower anchor were defective, the vessel was not seaworthy;[4] and where the main-top-gallant sails and studding-sails, which are useful in light breezes, were extremely rotten, and almost quite unserviceable, though the sails used in stormy weather were in good condition,—it was held, under this implied warranty, that the vessel was not seaworthy.[5]

The owner must also provide a sufficient crew, of competent skill for the voyage;[6] and if the vessel is without a competent crew, she is not seaworthy, and the underwriters will be discharged. As where the captain could not engage his full complement of men at Cuba for Liverpool, but he sailed with eight men for Liverpool and two for Jamaica, and proceeding to Jamaica, he landed the two men there, and got other two, and the ship was afterwards lost;—the court held that if eight men were sufficient, the touching at Jamaica was a deviation; and if they were not sufficient, the voyage assured had no inception, and that therefore the vessel was not seaworthy when she sailed from Cuba for Liverpool.[7]

But having provided a sufficient crew of competent skill, in the first instance, the owner makes no warranty that they shall do their duty during the continuance of the voyage; and the underwriter is responsible for the negligent absence or misconduct of the crew at the time of the loss, nor is that absence a breach of the implied warranty that the vessel shall be properly manned. As where the crew of a vessel had been paid off at a foreign port, and the ship left in care of the mate, who lighted a fire in the cabin in the evening, and went for the night on board another ship lying alongside; at four in the morning a fire broke out, and the vessel was consumed: and in an action on the policy, it was held, that whether this was a loss by barratry or negligence, it was a loss within the policy.[8] Where, also, the loss arose immediately from a peril of the sea, but remotely from the negligence of the master and mariners, the underwriters were

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1 Wilkie *v.* Geddes, 3 Dow, 57; Dixon *v.* Sadleir, 5 M. and W. 414.
2 Watt *v.* Morris, 1 Dow, 32.
3 Parker *v.* Potts, *ut sup.*
4 Wilkie *v.* Geddes, *ut sup.*
5 Wedderburn *v.* Bell, 1 Camp. 1.
6 Shore *v.* Bentall, 7 B. and C. 798.
7 Forshaw *v.* Chabert, 3 B. and B. 158.
8 Busk *v.* Ro. Ex. Ass. Co., 2 B. and A. 73.

held liable.[1] And where a vessel was stranded, within the meaning of that word in the policy, the underwriters were held liable for a partial loss, although the stranding might have been occasioned remotely by the negligence of the crew, in not providing a rope of sufficient strength to fasten the vessel to the shore.[2] And in the case of a time policy on a ship, from 14th April to 14th August,—the ship, at the commencement of the risk, down to and at the time of effecting the policy, and thence until her last voyage, was seaworthy, but she departed from her last place of stoppage in an unseaworthy state, and so remained until her loss, by reason of her having at the time of departure, and down to the time of her loss, an incompetent crew;—it was held, that, in a time policy, there could be no retrospective warranty of seaworthiness, and that the crew having been sufficient at the commencement of the risk, the negligence of not engaging a competent crew on her last voyage was that of the captain, and the consequent loss that of the underwriter.[3]

The owners must also provide a master of sufficient skill, and competent knowledge for the voyage insured; and should this not be done, or should the master not be possessed of competent skill and experience, or, in the event of the master's inability, there be no proper person to supply his place, the vessel is held not to be seaworthy, and the underwriters are discharged. As where a ship was assured to a port or ports on the Spanish coast of the Mediterranean, not higher up than Tarragona; but the captain, from ignorance of the coast, went into Barcelona, which is higher up than Tarragona, and was then in the hands of the enemy:—it was held, that as the captain had not sufficient knowledge for the purposes of the voyage assured, the underwriters had been discharged.[4] And where a vessel sailed from the Mauritius, with two mates and a full crew of sailors, but the captain being taken unwell, there being no person on board capable of managing the voyage to England, the vessel had to put back to get another officer, and in doing so, was lost:—it was held, that the ship could not be sufficiently manned, when, in the event of any accident happening to the captain, there was no one else on board capable of performing his duties.[5]

The captain must also have a pilot on board, wherever the navigation requires him to take the assistance of one; and it is a general rule, that the captain of a ship, engaged in the foreign trade, must put his ship under the charge of a regular pilot, both in the outward and homeward voyage, within the limits of every pilots' establishment, when positive regulations require him to do so;[6] and if the pilot leaves the vessel before she be conducted through that part of the navigation for which his skill is required, the underwriters will be discharged.[7] And if, in approaching a port where there is a regular establishment of pilots, the captain hoists a signal for a pilot, and after waiting a due time, no pilot comes on board, the captain, being a person of competent skill, and acting according to the best of his judgdment, can attempt to enter the harbour without one, and in doing so the vessel is lost;—the underwriters are liable for a loss happening under these circumstances.[8]

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1 Walker *v.* Maitland, 5 B. and A. 175.
2 Bishop *v.* Pentland, 7 B. and C. 214.
3 Jenkins *v.* Haycock, 1 W. H. G. 406.
4 Tait *v.* Levi, 14 East, 481.
5 Clifford *v.* Hunter, 1 M. and M. 103.
6 1 Park, 274; 1 Ain. 664.
7 Law *v.* Hollingsworth, 7 T. R. 160.
8 Philips *v.* Headlam, 2 B. and Ad. 380.

The principle is, that if the vessel, crew, and equipments be originally sufficient, the assured has done all that he contracted to do, and is not responsible for the subsequent deficiency, occasioned by any neglect or misconduct of the captain or crew, and that the absence, from any cause to which the owner was not privy, of the master or any part of the crew, or of the pilot (who may be considered as a temporary master), after they had been on board, must be on the same footing as the absence, from a similar cause, of any part of the necessary stores or equipments originally put on board; and this principle presents many nice and difficult inquiries.[1] As, in an action on a time policy for six months, stating the loss by perils of the sea, the underwriter pled, that, though the vessel was lost by perils of the sea, yet such loss was occasioned by the wrongful, negligent, and improper conduct (the same not being barratrous) of the captain and mariners of the ship, by wilfully, wrongfully, negligently, and improperly (but not barratrously) throwing overboard so much of the ballast, that the vessel became unseaworthy, and was lost by the perils of the sea, which otherwise she would have encountered and overcome:—it was held, in the Court of Exchequer Chamber (affirming the judgment of the Court of Exchequer), that the underwriters were liable for the consequences of this wilful, but not barratrous, act of the captain and crew, in rendering the vessel unseaworthy before the end of the voyage, by throwing overboard part of the ballast.[2]

But as, by the rules of an assurance association, it was, *inter alia*, provided that the managing underwriters should survey each ship assured, in hull and materials, once a year, and order such stores and repairs as they might deem necessary, which stores must be got and repairs done on due notice being given, otherwise the ship should not be assured: the policies were all to be time policies for one year:—it was held, that the effect of not complying with an order of the managing directors was, that the ship must be considered unseaworthy, and that the policy of assurance, which had been before effected on her, was void.[3] Where, however, the underwriters had agreed that the ship should be considered, and was thereby allowed, to be seaworthy in her hull, tackle, and materials for the voyage, and the assured declared that, to the best of their belief, and according to their knowledge and information, the ship, at the time of assurance, was, in all respects, seaworthy for the voyage:—in an action for a total loss by perils of the sea, it was held, that, whether the loss of the vessel was occasioned by unseaworthiness or by perils of the sea, the underwriters were bound by their admission, and could not dispute the seaworthiness.[4] And should a loss happen on a time policy, it will be no answer to an action on the policy to plead, that, during the time for which the ship was assured, and before the loss, the vessel was damaged and unseaworthy, but by reasonable care and diligence, and at small cost, she might and ought to have been repaired and rendered seaworthy, unless the knowledge of the assured be also shown that the vessel was known to be unseaworthy, and might have been repaired before the loss, and that he could, in fact, if not greatly negligent, have repaired the vessel before the loss, or that the loss was occasioned by his alleged default.[5]

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[1] Arn. 657. [2] Sadler *v.* Dixon, in Exch. Cham., 8 M. and W. 859.
[3] Stewart *v.* Wilson, 12 M. and W. 11. [4] Parfett *v.* Thompson, 13 M. and W. 733.
[5] Hollingsworth *v.* Brodrick, 7 A. and E. 40; Thompson *v.* Hopper, 6 El. and Bl. 291.

Although the vessel be abroad at the time of the assurance, or may have been out for twelve months, there is in a voyage policy the same implied warranty of seaworthiness, and the assured must show that the unseaworthiness did not arise until a period subsequent to the commencement of the risk; but when the vessel is assured in the latter part of a long voyage, the citerion of seaworthiness is relaxed, and it will be sufficient if she be in a fit navigable state for the voyage home; though no such warranty is *implied* in a time policy.[1] As, in a time policy on the good ship *Susan*, to continue from 25th September 1843 to 24th September 1844, both days inclusive, it did not very distinctly appear where the ship actually was at the time of effecting the policy, but she was lost before the expiration of the time in the policy:—it was held, in the House of Lords (reversing the decision of the Court of Queen's Bench), that a warranty of seaworthiness was not implied in this policy on the day when the policy attached.[2]

2.—*Of Changing the Ship.*

It is necessary that the ship assured, or by which the goods are to be carried or the freight earned, be named in the policy, unless in an assurance on goods, which may be made by "any ship or ships," provided the identity be sufficiently proved. Unless, therefore, in the case of absolute necessity, arising from the vessel's being disabled, by stress of weather or any other peril of the sea, from carrying on the goods to the place of destination, the captain cannot, without necessity, or without consent of the underwriters, change the goods into another vessel, though it be a better and stronger ship.[3]

If, before the commencement of the voyage, another ship be substituted for the ship named in the policy, or if, during the voyage, and without necessity, or the consent of the underwriters, the goods assured be transferred into another vessel, the underwriters will be discharged.[4]

If goods are shipped under a bill of lading in a general ship, which is prevented by storms and tempests from completing the voyage, it is doubtful whether the captain is *bound*, supposing he has the opportunity, to forward the goods to the place of destination; but, at any rate, he is *at liberty* to do so, by a conveyance equally cheap, if he think fit; and if the goods arrive at the place of destination by such other conveyance, he is entitled, on the freighter obtaining the goods, to the whole freight originally contracted for, though by the second conveyance the goods are carried for less than the original freight.[5]

Where the vessel is shipwrecked, and part of the cargo is saved, these goods may either be forwarded by another conveyance, or, where the necessity justifies, may be sold, and the proceeds invested in other goods, and these sent home by another vessel,—and the goods originally assured, or the goods purchased with their proceeds, although in another ship, will be covered by the original policy.[6] But a captain has no power to sell the ship, unless in the case of absolute necessity,—not either a legal or a physical necessity, but a moral necessity. As, "if he has no means of

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[1] Arn. 656.
[2] Gibson *v.* Small, 4 H. of L. Ca. 353.
[3] 1 Mar. 128; 1 Park, 917; 1 Arn. 178.
[4] Mar. 128; 1 Arn. 178.
[5] Shipton *v.* Thornton, 9 A. and E. 314.
[6] Plantamour *v.* Staples, 1 T. R. 611.

getting the repairs done in the place where the injury occurs, or if, being in a place where they might be done, he has no money in his possession, and is not able to raise any—then, he is justified in selling, as the best thing that can be done." [1] "The shipmaster has, by virtue of his employment, not merely those powers that are necessary for the navigation of the ship, and the conduct of the adventure to a safe termination,—*but also a power, where such termination becomes hopeless, and no prospect remains of bringing the vessel home, to do the best for all concerned*, and, therefore, to dispose of her for their benefit." [2] But, as it is the duty of a shipmaster, in case of damage to his ship, to do all that can reasonably be done to repair her, so as to bring home her cargo and earn the freight,[3] and unless under urgent necessity, he is not entitled to sell the ship without the authority of the owner; [4]—therefore, where a shipmaster has no authority from his owner to sell his ship,—in order to justify a sale by him, there must be a strong case of necessity, the proof of which lies upon the purchaser; and the necessity which the law looks at is not an absolute impossibility of getting the ship repaired, because if the ship, being in a foreign port, cannot be sent upon her voyage without repairs, which would cost so great an expense as no prudent person would incur,—that will be a case of necessity, and will justify the shipmaster in selling.[5]

3.—*Of the Ship's Conduct on the Voyage.*

It is another implied condition as to the ship, that she must be engaged in a legal trade, and that that trade must be carried on in a legal manner; and that, for this purpose, the vessel shall be employed, navigated, and conducted, both according to the law of nations, and of the country to which she belongs.[6]

It is necessary, also, that the vessel be navigated according to the subsisting treaties between her own state and other states; and she must, therefore, be provided with all the documents, passports, and papers required by these treaties between the countries.[7] But the assured upon *goods* has no concern in obtaining the ship's documents,[8] unless he also be the owner of the ship insured.[9] And if the vessel be a neutral ship, though not warranted or represented as such, she is bound to be provided with the documents necessary to prove her neutrality.[10]

The captain must be duly qualified in terms of the Merchant Shipping Act; and if he be under any legal disability or disqualification, the ship is held to be not duly navigated, and the assurance on the ship will be void.[11] Likewise, the vessel must also be navigated, during the voyage, by a crew engaged according to the Merchant Shipping Act.

When the captain is bound by law to make out and sign a manifest of all goods shipped in British ships beyond seas, for this country, before clearing out, every part of the cargo, even that for dunnage and ballast, must be inserted, and the omission will render the voyage illegal.[12] But,

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[1] *Per* Tindal, C.J., in Soames *v.* Suyrece, 4 C. and P. 276.
[2] *Per* Parke, B., in Hunter *v.* Parker, 7 M. and W. 342.
[3] Benson *v.* Chapman, 2 H. of L. Cases, 696.
[4] *The Bomba*, 1 Lushington, 252.
[5] Lapraik *v.* Burows, 13 Moore, P. and L. 132.
[6] Mar. 135.
[7] Mar. 136; 1 Arn. 689.
[8] Carruthers *v.* Gray, 15 East, 35.
[9] Bell *v.* Carstairs, 14 East, 394.
[10] Dawson *v.* Atty, 7 East, 367.
[11] 1 Park, 473; Mar. 135.
[12] Freard *v.* Dawson, Mar. 136.

it is no objection to an assured recovering a loss by perils of the sea, that after the captain, who was also owner, had cleared at the custom-house, the goods assured, which had been previously entered there, had been put on board.[1]

II.—OF THE VOYAGE.

By the voyage, is here understood the passage which a vessel makes from one port to another, or to a series of ports. It has been already seen what goods can be lawfully assured; and here it will be necessary to consider—1. The illegality of the voyage; 2. What is deemed a deviation; 3. What necessity justifies a deviation.

1.—*The Illegality of the Voyage.*

The general rule is, that no assurance can be made on a voyage which is undertaken contrary to, or which is expressly prohibited by, the common, statutory, or maritime law of the country, or of its dependencies, or the law of nations, whether the underwriter knew of the illegality or not.[2] And although it may be that the voyage be in itself legal, yet, if it is made for the purpose of conveying smuggled or prohibited goods into this country, or with the intention of defrauding the revenue laws of the country,—where the object of the voyage cannot easily be distinguished from the voyage itself,—the latter is illegal, and the assurance will be void.[3]

But the law of this country pays no attention to the revenue laws of other countries; and, therefore, when the ship has traded, or is intended to trade, or carry on trade, with the subjects of foreign states, contrary to the revenue laws of these countries, a policy of assurance effected here will be good and valid; and if a loss happen, the underwriter is liable, though the trade assured be carried on by British subjects.[4]

As all commerce with a port in a state of blockade is prohibited, a voyage to that port is illegal, and the assurance void; and the act of sailing to a blockaded port, under such circumstances, being held an attempt to break the blockade, constitutes the offence, unless the sailing be with the intention of inquiring off the port if the blockade be still in force.[5] By the law of nations, the public notification of a blockade is held to be notice of it to all the subjects of that nation to which notification has been made; but, in questions of the law of assurance, knowledge of the fact must, in general, be proved in the assured. As, in an action on a policy of assurance on goods, for a voyage from Liverpool to a blockaded port, it was proved that the vessel sailed from a port in this kingdom before the blockade was notified in this country, but afterwards put into another port after such notification in the *London Gazette*, and when the blockade must have been known there:—the jury having found, that the captain did not know of the blockade, the court held, that the knowledge of the captain was not to be presumed, on the principle, that notice to a state was notice to all the subjects of that state, but that this was a question of fact which had to be proved.[6] And it has also been held, that a vessel may

1 Carruthers *v.* Gray, *ut sup.*
2 Mar. 37; 1 Park, 497.
3 2 Park, 534; Mar. 42.
4 Mar. 44; 1 Park, 505; 1 Arn. 705.
5 Mar. 36.
6 Harratt *v.* Wise, 9 B. and C. 712.

sail for a blockaded port after notification of the blockade, without contravening the law of nations, when the sailing is specially for the purpose of inquiring whether the blockade continued.[1]

2.—*What is deemed a Deviation.*

It is an implied condition in every marine assurance, that the ship shall proceed direct to her port of destination by the shortest and safest course, —it being only the risk of the voyage to be thus performed that the assurer agrees to run; and it is, therefore, another necessarily implied condition, that there shall be no deviation from this course, unless in cases of necessity, or for some other reasonable cause.[2]

The commencement and termination of the voyage described in the policy, and of the voyage intended, must be the same, and that voyage must be performed with all safe and practicable expedition, in the regular or customary track; and any voluntary departure from this usual course, without necessity, is a deviation, and, from the time of deviation, the underwriters are not liable for any subsequent loss; nor does it matter whether the loss be or be not an actual consequence of the deviation, as in whatever place it may happen, or to whatever cause it may be attributed —if it happen subsequent to the deviation, the underwriters are not answerable, even though the deviation should be made without the knowledge of the assured.[3]

Thus, it is of no moment for how short or how long a time or distance a deviation is made, if it actually takes place, and though neither the risk nor the premium would have been greater, had the deviation been allowed in the policy. As, where a vessel had been assured, at and from Carron on the Forth to Hull, with liberty to call at Leith; but the vessel did not call at Leith, and put into Morrison's Haven, a port to the eastward on the same side, and, after regaining her course, was wrecked, and the cargo totally lost:—the House of Lords held (reversing the judgment of the Court of Session), that a wilful deviation from the course of the assured voyage is, in all cases, a determination of the policy; that, from that moment, the engagement between the assurers and assured is at an end; and that it is immaterial from what causes, or at what place, a subsequent loss arises, the assurers being in no case answerable for it.[4]

But an *intention* to deviate, not carried into effect, or instructions given for that purpose to the captain before sailing, will not discharge the underwriters, if the deviation does not take place;[5] or if the vessel be lost, or damage sustained, before arriving at the point at which the intended deviation was to take place.[6] As, where goods were assured from Heligoland to Memel, with liberty to touch at any ports, and to seek for convoy,—warranted free from capture in the port of Memel,—and the vessel sailed from Heligoland, with orders to go to Gottenburg, to know whether to proceed to Anholt or Memel, and was captured or her way to Gottenburg, which is in the track either to Anholt or Memel:—it was held that the ship never having reached Gottenburg, the purpose of going thither was

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[1] Naylor *v.* Taylor, 9 B. and C. 718.
[2] Mar. 138; 2 Park, 619.
[3] Mar. 139; 2 Park, 619; 1 Arn. 341.
[4] Elliot *v.* Wilson, 7 Bro. P. C. 459.
[5] Mar. 155; 2 Park, 654; 1 Arn. 343.
[6] 1 Arn. 345.

merely an intention to deviate, which did not vacate the policy.[1] So, in a voyage from Liverpool to London, goods had been taken in to deliver at Southampton, at which the ship had no liberty to call; but, in the early part of the voyage, and before her arrival at the dividing point, the cargo had received considerable damage from bad weather, although, on the after-part of the voyage, the weather was tolerably fair, and there was no heavy sea:—it was held, that the assured on goods were entitled to recover.[2]

When there is liberty to touch and stay at any port or place, without its being deemed a deviation, this also includes a liberty to take in goods, if no delay be thereby occasioned, nor any increase or alteration of the risk. As where a vessel, assured from Stockholm to New York, stopped at Elsinore, to pay the Sound dues and take convoy, and also took in some provender for the sheep on board, but not thereby delaying the voyage:—it was held, that this was no avoidance of the policy.[3] And where a vessel lying for convoy took in a few goods in a roadstead, after the signal for sailing, but before the signal to weigh,—but no delay being occasioned by taking in these goods,—this was held not to be a deviation.[4] But a liberty to touch and stay at, will not authorise the captain to go to a port or place not in the usual course of the voyage, or for a purpose unconnected with the voyage. As, where a vessel was assured at and from London to Berbice, with liberty to call at all or any of the Windward or Leeward Islands and colonies, on the passage to Berbice, and to discharge, exchange, and take on board the whole or any part of a cargo at any ports or places, and particularly at all or any of the Windward or Leeward Islands, without being deemed a deviation:—it was held, in an action on this policy, that the ship having proceeded to two of the Leeward Islands for a purpose wholly unconnected with the voyage, this was a deviation, and vitiated the policy.[5]

A liberty to touch, or touch and stay at, any intermediate port will cover a trading there, by breaking bulk, and discharging and taking in a cargo, provided that be not inconsistent with the principal object of the voyage, and that no unnecessary delay takes place; and where a liberty to trade is expressly excluded, this is not done because, if not inserted, that liberty is held to be impliedly excluded, but not to justify delay in trading.[6]

A liberty to "stay and trade" does not cover a voluntary delay unconnected with trade. Thus, where a vessel having by her policy liberty to stay and trade on the West Coast of Africa, remained in a roadstead there in order that the captain and crew might be employed in saving the cargo of another ship, it was held that this amounted to a deviation, and avoided the policy.[7]

If there are several places of discharge or call named in the policy, these ports must be taken in the precise order in which they are named.[8] As, where a vessel was insured at and from Fisherrow to Gottenburg, and back to Leith and Cockenzie; and, on the return voyage, the vessel went first to Cockenzie, being nearer Gottenburg, and was stranded in the harbour

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1 Heselton *v.* Allnut, 1 M. and S. 46.
2 Hare *v.* Travis, 7 B. and C. 14.
3 Cormick *v.* Gladstone, 11 East, 347.
4 Laroche *v.* Oswin, 12 East, 131.
5 Hammond *v.* Reid, 4 B. and A. 72.
6 Raine *v.* Bell, 9 East, 195.
7 Company of African Merchants *v.* British and Foreign Insce. Co., L. R. 8 Ex. 154.
8 2 Park, 625; 1 Arn. 358.

of Cockenzie:—it was held, that, unless there was some usage proved, or some special facts to vary the general rule, the party assured must go to the places mentioned in the policy in the order in which they are named, and that to depart from that course is a deviation.[1] And where, after describing the voyage, leave was given to call at all or any of the West India Islands, St. Domingo and Jamaica excepted, it was held that the ports must be taken in the succession in which they occur in the direct and customary course of the voyage; and, therefore, such leave will not protect the ship, having *once* sailed *southward* as far as Demerara, in sailing *northwards* to Martinique and St. Thomas's.[2] But a precise, clear, and established usage, or a particular necessity of calling at particular places, though out of the direct line of the voyage, may alter this general rule.[3]

If leave is given to call at all ports and places in the voyage, this must generally be done in the usual course of the voyage, and in the geographical order in which they occur;[4] as, in a case already referred to, where this leave was to call at all or any of the West India settlements or islands, excepting St. Domingo or Jamaica,—the court held, that the largeness of the words seemed to give liberty to go to any island, in any order she pleased, yet this must be confined to places in their geographical order *in the course of the voyage.*[5] And the calling must be for some purpose connected with the voyage, and subordinate to it and to the usual course of it.[6] As, where a ship was assured at and from London to Berbice, with liberty to touch, stay, and trade at all places, &c.; the ship arrived with convoy off Madeira, and began to land goods and load wine in exchange, but before the wine could be got on board, the convoy sailed; some time afterwards the vessel sailed with some others, which were in the same situation, and was captured; but the court held, that the liberty must be construed with reference to the main scope of the voyage, and that the *voluntary* staying behind for the purpose of trade was a deviation which discharged the underwriters.[7]

If the vessel proceed to a port or place, though in the course of the voyage, for a purpose unconnected with it, this will be deemed a deviation; as, in the above case of Hammond *v.* Reid, where leave was given to call, &c., at any of the Windward and Leeward Islands, but the vessel proceeded to two of the Leeward Islands for a purpose wholly unconnected with the object of the voyage:—this was held a deviation which vitiated the assurance, notwithstanding the leave. But it will be otherwise if it distinctly appear from the words of the policy that it was not the intention of parties to attend to the geographical order. As where, in a policy on a voyage at and from Antigua to London, liberty was given to call at all or any of the West India islands, including Jamaica, which was 500 miles out of the direct course:—it was held, that this showed the islands might be taken without regard to their geographical order, and that the assured might stop at any of them, though not in her course.[8] And in a voyage assured from Martinique, and all or any of the West India islands, to London, it was held to be no deviation that the vessel sailed from Martinique to St. Domingo, though much out of her course to London.[9] And

[1] Beatson *v.* Haworth, 6 T. R. 531.
[2] Gardner *v.* Senhouse, 3 Taunt. 16.
[3] 2 Park, 646; 1 Arn. 359.
[4] Mar. 144; 1 Arn. 357.
[5] Gardner, *ut sup.*
[6] 1 Arn. 365.
[7] Williams *v.* Shee, 3 Camp. 469.
[8] Metcalfe *v.* Parry, 4 Camp. 123.
[9] Bragg *v.* Anderson, 4 Taunt. 229.

the same will hold if it appears from the policy that the assured was not to be confined to the different ports or places in their direct geographical order or nautical course:—as, where a policy was effected at and from Singapore, Penang, Malacca, and Batavia, all or any, to the ship's port of discharge in Europe, with leave to touch, stay, and trade at all or any ports or places whatsoever and wheresoever, in the East Indies, Persia, or elsewhere, &c.; the ship took in part of her cargo at Batavia, then went to Sourabaya, another port in the East Indies (not in the course of the voyage from Batavia to Europe, and not specified in the policy), and took in goods, and then returned to Batavia, and sailed from thence to Europe, and was lost:—it was held, that the going to Sourabaya was not a deviation, and that goods taken in there were protected by the policy.[1]

Under a liberty to touch, stay, and trade, &c., at any port or place, the master has no power to change the regular course of the voyage assured, as this liberty only extends to the ports and places in the usual and ordinary course of that voyage;[2] nor can he adopt an intermediate voyage, not having for its object the accomplishment of the voyage originally assured;[3] and he is bound to proceed at once to the port of destination in the policy, and is not at liberty to make an intermediate voyage for his own purposes, although, notwithstanding such intermediate voyage, the vessel arrives before the time at her original destination.[4]

It is otherwise, however, where the intermediate voyage is undertaken agreeably to the usage of the particular trade in which the vessel is engaged.[5] As, where a vessel was assured from Newfoundland to a port in Portugal; she arrived at Newfoundland in July, proceeded to Sydney for coals, where she arrived in August, delivered her coals at Newfoundland in October, and there loaded fish for Oporto in November, and was lost:—it was held, that the captain acted *bonâ fide*, and according to the usage of the trade, in making the intermediate voyage.[6] Of the usage of trade, the underwriters are bound of themselves to take notice.[7]

But this leave to touch, stay, trade, &c., must be taken to mean for some purpose connected with the voyage assured, and within the scope of the adventure; and it is, therefore, always interpreted as subordinate to that voyage, which must be understood with reference to the laws of commerce and the usage of the particular trade.[8] It is, therefore, a rule that an unnecessary delay in trading, is held to be the same as a deviation, and will discharge the underwriters;[9] but whether the purpose which occasioned the delay be within the scope of the adventure or not, is a question of law,—and whether the vessel stay an unreasonable time, is a question of fact.[10]

As, where an assurance was effected on goods in a vessel called the *Clipper*, at and from Liverpool to any port or ports, place or places, of loading and trade, on the coast of Africa and African islands, during her stay and trade on the said coasts and islands, and at and from thence to her port or ports of discharging in the United Kingdom, with leave to call at all ports and places, backwards and forwards, *without being deemed a*

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1 Hunter *v.* Leathley, 10 B. and C. 858.
2 Mar. 143; 1 Arn. 365.
3 Bottomley *v.* Bovill, 5 B. and C. 210.
4 M'Andrew *v.* Adam, 1 Bing. *n. c.* 29.
5 2 Park, 646; 1 Arn. 355.
6 Ougier *v.* Jennings, 1 Camp. 505.
7 1 Park, 101; 1 Arn. 43.
8 1 Park, 106; 1 Arn. 373.
9 Mar. 153; 1 Arn. 380.
10 Langhorn *v.* Alnutt, 4 Taunt. 511.

deviation, with liberty for the ship in that voyage to proceed and sail to, and stay at, any ports or places whatsoever, and with leave to load, unload, &c., goods, wherever she might proceed to, with any ship's boats, &c., in loading and unloading included, *particularly with liberty to tranship* on board any vessel or craft in the same employ, and with an agreement that the vessel might be employed as a *tender* to any ship or vessel in the same employ:—the vessel arrived at Benin in Africa, and stayed there thirteen months, during which time she was employed in conveying goods from a vessel in the same employ, at the mouth of the river, to Camaroons, and putting them on board another vessel, also in the same employ; but, on her return with a homeward cargo, she was lost:—it was held, that the judge who tried the case was right in telling the jury that the voyage to the Camaroons was a deviation, and that the vessel was not acting as a tender within the meaning of the policy; and also, that it was a proper question for the jury, whether her stay at Benin was unreasonable or not; and they having found in the affirmative, it was held that it was warranted by the evidence.[1] Yet, under an assurance "*at and from*," time spent in completing repairs before the vessel commenced her voyage, not being voluntary, is not deemed an unnecessary delay, so as to discharge the underwriters.[2]

The burden of proving the deviation lies on the underwriters.

3.—*What Necessity justifies a Deviation.*

If a deviation from the voyage assured be voluntary, and not warranted by any necessity, force, or just cause, it discharges the underwriters; but it does not, if it be not voluntary, if it be occasioned by a necessity which, to justify the deviation, must be real, inevitable, and overruling.[3] If, therefore, the deviation is unavoidable, and necessary for the general behoof of all concerned, the underwriters will not be discharged, provided this voyage of necessity be pursued in the shortest and safest course, and in the shortest time.[4]

The causes of necessity which will justify a deviation from the ordinary course of the voyage are:—

1. Where the deviation is caused by a storm or stress of weather, or is made to avoid or escape a storm, or the captain is driven by a storm to seek refuge in a port out of the usual course of the voyage,—this being occasioned by the act of God, does not affect the assurance; and, in such case, the captain need not return to the point whence he was driven, but he can make the best of his way to the port of destination.[5]

2. Where, in consequence of having encountered storms, or from some other cause, the vessel is so much injured that she cannot safely pursue her voyage without repairs, the captain can carry her into the nearest port where such repairs can be had. But nothing more must be done than the repairs absolutely necessary to enable her to proceed on her voyage;[6] and the want of repairs will not justify stopping and trading at any port or place going or returning for these repairs.[7] If the vessel has been over-

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[1] Hamilton *v.* Shedden, 3 M. and W. 49.
[2] Franco *v.* Natusch, 2 M. and W. 401.
[3] Mar. 157; 2 Park, 634.
[4] Mar. 158; 2 Park, 647.
[5] Mar. 158; 2 Park, 638; 1 Arn. 402.
[6] 1 Arn. 400.
[7] Mar. 160; 2 Park, 636.

loaded, she may go to the next convenient place and unload part;[1] or, if she has too little ballast, she may, at the first convenient place, take in more ballast, or goods as ballast.[2]

3. Where, from reasonable apprehensions of being taken by an enemy or pirates, or to avoid these, the captain leaves the usual track of the voyage, or sails out of port without a pilot, or only half loaded, to avoid detention or capture;[3] or where the policy contains no warranty against seizure in port, and the vessel goes out to sea before she is properly loaded, to avoid seizure, and, being too light, puts into another port out of the course of her voyage, partly to repair and partly to complete her cargo.[4] But where the vessel is warranted free of capture in port, and the vessel sails under the above circumstances, to avoid such seizure, the underwriters are discharged.[5]

4. Where the deviation is made for the purpose of succouring a ship in distress, which, being for the common advantage of all parties connected with the sea, will not discharge the underwriters.[6]

5. Where the crew are disabled by sickness, or other physical cause, from properly navigating the vessel, so as to render it impracticable or dangerous to proceed on the voyage, the vessel may put into the nearest port where medical assistance can be obtained, or other hands procured; unless, in cases where a surgeon is required for the voyage, and a surgeon of competent skill, furnished with the necessary medicine-chest and requisite *instruments*, is not on board; and, in other cases, the proper medicine-chest is not on board.[7]

6. Where, by the mutinous compulsion of the crew, the vessel is carried out of the direct and ordinary course of the voyage, to which the captain is forced to submit.[8] As, where a vessel was barratrously carried out of her course by the crew, and the ship and part of her cargo sold, and the remainder sent home by another vessel:—it was held, that there was a total loss from the time of committing this act of barratry.[9]

If a deviation is made from the usual course of the voyage, when such deviation can be justified on the ground of necessity, the duration and extent of the deviation must be warranted by the degree of the necessity; nothing more must be done than what the necessity requires; and this substituted voyage of necessity must be pursued in the direct course, and in the shortest time possible.[10]

II.—EXPRESS WARRANTIES.

As already explained, an express warranty is a stipulation, obligation, or condition introduced into the policy, by the express agreement of parties, and varies according to the nature and exigencies of this agreement. An express warranty must, in order to be effectual, appear *on the face of the policy itself*, and may be written either in the body of it,—on the margin of it, in the usual way,—or transversely on the margin;[11] but, in order to make written instructions to effect the assurance valid and binding as a

1 Weir *v.* Aberdein, 2 B. and A. 320.
2 2 Park, 637.
3 1 Park, 644; 1 Arn. 404.
4 O'Reilly *v.* Gone, 4 Camp. 249.
5 O'Reilly *v.* Ro. Ex. Ass. Co., 4 Camp. 246.
6 Mar. 161; 2 Park, 647; 1 Arn. 405.
7 Woolf *v.* Claggett, 3 Esp. 256.
8 Mar. 163; 1 Arn. 399.
9 Dixon *v.* Reid, 5 B. and A. 597.
10 2 Park, 476; 1 Arn. 398.
11 Mar. 282; 2 Park, 664.

warranty, they must appear *on the face* of the instrument itself, by which the contract of assurance is effected.[1] And, therefore, though a written paper of instructions be wrapped up in the policy, at the time it is brought to be subscribed, or a written paper, describing the state of the ship, &c., be wafered to the policy at the time of subscribing, these are not warranties, but representations merely.[2]

But when the policy refers to certain printed rules or conditions of the assuring club or company, these will be considered as part of and as incorporated in the policy.[3] As, when a ship was warranted not to "sail foreign," after the times limited in certain club rules or warranties, which limited the time of sailing to different parts of the world; and, by one of these it was provided, that vessels might sail *after* the limited times on payment of additional premium, as per scale; and by another, every member, before commencing each voyage, was to give his acceptance for the premium, and parties neglecting to give notice were subject to a penalty: —it was held, assuming that these rules could be incorporated with the policy, that a party whose ship had sailed too late and been lost, could not afterwards obtain the benefit of the extended time, by then submitting to the penalty and paying the extended premium.[4]

The usual express warranties are—1. That the ship shall sail or depart on, before, or after a certain day; 2. That she was safe on a certain day; 3. That she shall sail with convoy; 4. That the ship or goods are neutral property.

1.—THAT THE SHIP SHALL SAIL OR DEPART ON, BEFORE, OR AFTER A CERTAIN DAY.

The time of sailing, in almost all policies, is a material circumstance; and, therefore, where there is a warranty to sail on, or before, or after a given day, this warranty must be strictly complied with, even though, for the most prudent reasons, the sailing should be delayed, or though the vessel should be detained by force, or by order of Government; and if the vessel sails after the day fixed in the warranty, although the delay has been occasioned by a restraint of Government, the underwriters are discharged.[5]

When a vessel sails *from* her port of loading, with her full and complete cargo, and all her clearances and crew on board, and has no other object in view than the best mode of sailing to her port of delivery, her voyage may be said to commence on her departure from that port; and if she once so break ground, and is once actually under sail on her voyage, for however short a distance,—should she be lost in that distance, or put back by stress of weather, or should an embargo be put on, the warranty is complied with.[6] Thus, a vessel was warranted to sail from Demerara on or before the 1st August; the goods assured were loaded, and the cargo completed, and the captain, having obtained his clearances, set sail, and proceeded down the river, and, when about two miles out at sea, he anchored by advice of the pilot, the tide being low; on the 3d, he crossed

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[1] Lothian *v.* Henderson, in H. of L., 3 B. and P. 499. [2] Mar. 281; 1 Arn. 578.
[3] Pettigrew *v.* Pringle, 3 B. and Ad. 314. [4] Graham *v.* Barras, 5 B. and Ad. 1011.
[5] Mar. 283; 1 Arn. 589. [6] 2 Park, 671; 1 Arn. 591.

the shoal, about ten or twelve miles from the port, where large vessels usually anchor to discharge part of or complete their cargo; and, on the 8th, the vessel was lost by perils of the sea:—this was held to be a sailing within the meaning of the policy.[1] But where the condition was, that the vessel should not sail from ports in Ireland *after* the 1st September, and that the time of clearing at the custom-house should be deemed the time of sailing, provided the vessel was then ready for sea; before the 1st September, the vessel dropped down the river ready for sea, excepting her full quantity of ballast, there being a bar at its mouth, which the vessel could not have crossed with that quantity on board; boats with the ballast were, however, waiting outside the bar, and the ballasting was completed on the 4th September; in crossing the bar the vessel struck, and to ascertain the damage, the vessel sailed seven miles to another port; but, when she left the river, she had only eight men on board, of her full complement of nine—the carpenter being absent—and another carpenter was hired at this port, who sailed on the voyage:—it was held, that this was not a sailing in compliance with the condition, and that, until the ballast was completed, she was not ready for sea.[2] And in the case already referred to, where the vessel was warranted not to sail foreign *after* the time restricted by the club rules, by which the last day for sailing was the 1st September; on 31st August the vessel cleared out at the custom-house of Dublin, and next day dropped down the Liffey to the Pigeon-hole, about two miles below the custom-house, her crew being then incomplete, although, during that day, the whole of the crew came on board; on the afternoon and evening of that day, the wind was unfavourable for going to sea, but a little before midnight—it being then low water—the wind became fair, and about half-past three o'clock on the 2d, the vessel sailed from the Pigeon-hole with a fair wind, and proceeded on her voyage, and ultimately, and not before, quitted the port of Dublin, about half-past five of the morning of that day:—it was held, that the ship was not ready for sea at the time of clearing, when she had only the master, mate, one seaman, and two boys on board, and could not get down the Liffey without assistance.[3]

Nor, where the warranty is to sail *on* or *before* a certain day, is it complied with by the vessel being ready to sail on *that day*, and proceeding for a short distance along her moorings; nor can strict performance of this warranty be dispensed with, even though unavoidable necessity prevent compliance with it. But, in a policy at and from Surinam, and all or any of the West India islands, a warranty to sail on or before 1st August was held to have been complied with by the vessel taking in her cargo there, and sailing that day to Tortola, to seek convoy; from thence she afterwards sailed, and was lost on her voyage home:—the court holding, that it was the same in substance as if the warranty had been, to leave her last port of lading by that day, and that the introduction of "all or any of the West India islands," was merely for the benefit of the assured, in case the ship should have been taking in her cargo at any of these, when her homeward voyage was to commence.[4] So where the warranty was to sail on or before a particular day, it was held, that this warranty was not fulfilled

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1 Lang *v.* Anderdon, 3 B. and C. 495.
2 Pettigrew *v.* Pringle, 3 B. and Ad. 414.
3 Graham *v.* Barras, 5 B. and Ad. 1011.
4 Wright *v.* Shiffner, 2 Camp. 247.

if the ship did not completely unmoor on that day, *and was actually on her voyage*, though she had then her cargo on board, and, being quite ready to sail, was only prevented by stress of weather.[1] And a ship, assured "at and from New York to Quebec, during her stay there, thence to the United Kingdom,—the said ship *being warranted to sail from Quebec on or before the 1st of November* 1853,"—sailed from New York on 15th October, and during all the 1st November she was at sea on her voyage between New York and Quebec, and *whilst on that voyage, and after the 1st November*, the ship struck on some rocks, and was totally lost:—it was held that, according to the true construction of the warranty, there was no limitation of time as to the voyage from New York to Quebec, but as to the voyage from Quebec to the United Kingdom, the underwriters were not responsible, unless the vessel sailed from Quebec on or before 1st November 1853.[2]

Thus, a warranty to sail on or before a certain day, is not complied with by the ship's raising her anchors, getting under sail, and moving onwards, unless, at the time of performing these acts, she has everything ready for the performance of the voyage, and these acts are done as the commencement of it,—nothing remaining to be done afterwards.[3] And so, also, if the warranty is to *depart* on or before a certain day, the ship must be actually out of her port on or before that day; and it is not enough to satisfy this warranty, that the vessel break ground and commence her homeward voyage, if she be not out of port, and have been on her voyage by that day. As, where the policy was on a ship at and from Memel to her port of discharge in England, warranted to depart on or before a certain day; the vessel set sail on the voyage before that day, but was detained within the harbour by adverse winds until after the day:—it was held that the warranty required, not only that the ship should set sail on the voyage, but that she should be out of the port on or before that day; and that, therefore, this sailing was not a compliance with the warranty.[4] But where the warranty is *not to sail* for a certain place *after* a certain date, and on that day the vessel, being in dock fully loaded, and having cleared for her port of destination, was warped out of dock into the river, as early in the afternoon as the tide permitted, and in consequence of the wind not allowing the sails to be set, she was warped down the river about half a mile, when the tide failing, she took the ground; and next day she was warped a little farther, and again took the ground about ten miles from the harbour mouth, but the wind having changed on the following day, she set sail and got out to sea:—it was held that, as the facts clearly showed she was in prosecution of her voyage on the day named in the policy, having made a movement, though in the river, for the purpose of proceeding to the sea, and over the sea, to her port of destination, the warranty had not been broken, and that the assured were entitled to recover.[5] And, as stated by Lord Tenterden, the rule is, "that if a ship quits her moorings and removes, though only to a short distance, *being perfectly ready to proceed on her voyage*, and is detained by some subsequent occurrence, *that is nevertheless a sailing;* but it is otherwise if, at the time she quits her moorings and hoists her sails,

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[1] Nelson *v.* Salvador, M. and M. 309. [2] Baines *v.* Holland, 10 W. H. and G. 802.
[3] *Per* Lord Tenterden, in Lang *v.* Anderdon, 3 B. and C. 499.
[4] Moir *v.* Ro. Ex. Ass. Co., 3 M. and S. 461. [5] Cochrane *v.* Fisher, 5 Tyrwh. 496.

she is not in a condition for completing her sea voyage."[1] It has been already seen, that the sailing with a competent crew for the voyage was an essential requisite; and it is a general rule, that the sailing must be with the necessary furniture and equipments, and a competent crew for the voyage; and if defective in any of these, then she has sailed in an unseaworthy state.[2] As where a ship, warranted to sail from Portneuf on the St. Lawrence, on or before the 28th October, left Portneuf on the 26th, arrived on the 28th at Quebec, where all vessels are obliged to clear out from the St. Lawrence,—completed her crew, which was insufficient for the voyage when she left Portneuf,—obtained her clearance on 29th, and sailed from Quebec on the 30th:—the court held, that the warranty, which contemplated a sailing on the voyage, had not been complied with, the dropping down from Portneuf without the proper complement being only preparatory to the voyage.[3] So, also, an assurance was on ship and goods "at and from Cuba to Liverpool," and there was no liberty to touch and stay at any place:—ten seamen were the ship's full crew for the voyage; but some of the original crew having been lost at Cuba by sickness and desertion, the captain sailed from Cuba with *eight* men for the whole voyage from Cuba to Liverpool, and *two* men engaged for Montego Bay, Jamaica, where the ship put in and landed these two, and procured other two, and again sailed; and the ship was lost in sailing from Montego Bay to Liverpool:—it was held, that the ship when she sailed from Cuba, *was not seaworthy for the voyage to Liverpool*, as she had not then on board her full complement of men engaged for the whole voyage.[4] And to an action for loss of the ship by the perils of the sea, the underwriter pled, that the ship, when the assurance attached, was in the port of Sunderland (where the owner resided), outward bound, and loaded with a cargo from Sunderland to Constantinople, and was sent out to sea in an unseaworthy state, and when she was not in a fit condition safely to go to sea, and when it was dangerous for her to go to sea in the state and condition she was then in, and that the owner improperly and wrongfully caused and permitted the ship to remain on the high seas, near to the sea-shore in this state and condition, and without the captain and her proper crew, during which time the ship was wrecked:—it was held, that these were an answer to the action.[5]

II.—THAT THE SHIP, ETC., WAS SAFE ON A CERTAIN DAY.

Sometimes the assured warrants that the ship or the goods assured were safe on a certain day; and if the subject assured was safe on any part of that day, this warranty is sufficiently complied with, even though a loss happen on that day, and before the policy was signed. As where, in a policy on goods, from the port of lading, dated 19th December,—"lost or not lost," and warranted well this 19th December,—it appeared that the policy was underwritten between one and three of the afternoon of that day, and that the ship was well at six o'clock of that morning, but was lost at eight o'clock the same morning:—the court held very clearly, that the warranty was sufficiently complied with if the ship was well at

[1] *Per* Lord Tenterden, in Pettigrew *v.* Pringle, 3 B. and Ad. 320.
[2] Fawcus *v.* Sarsfield, 6 El. and Bl. 192.
[3] Ridsdale *v.* Newnham, 3 M. and S. 456.
[4] Forshaw *v.* Chabert, 3 B. and B. 158.
[5] Thompson *v.* Hopper, 6 El. and Bl. 172.

any time of that day,—that there was good reason for inserting these words, because they protected the underwriter from any loss before that day, to which, otherwise, the words "lost or not lost" would have subjected him, and thus, too, the words "lost or not lost" have also their operation.[1] But in an assurance on a ship, "at and from Hamburg to Vigo," the warranty was in port on the 19th October, while on that day, the ship was in the port of Cuxhaven, which, though also on the river Eider, is 90 miles below Hamburg, and without the limits of that port:—it was held, that the warranty had not been performed.[2] And where a ship had sailed from Elsinore on her voyage home, six hours before the owner, who followed in another vessel on the same day, and having met with rough weather in his passage, he arrived first, and then caused an assurance to be effected on his own ship:—it was held, that these circumstances were material to be communicated to the underwriter, and that it was not sufficient merely to state that the ship assured was "all well" at Elsinore on the day of her sailing.[3]

III.—THAT SHIP SHALL SAIL WITH CONVOY.

This warranty, as other warranties, had to be strictly complied with; but, as such a warranty will, it is to be hoped, not now occur, all that seems necessary is to state the general rules fixed by decisions.

1. There must have been a sailing with the naval force, as convoy, under the command of a person appointed by Government, whether it be one convoy for the whole voyage, or several convoys taken at different stations; but the sailing with any other ship of war than the convoy regularly appointed by Government was not a sailing with convoy within the terms of the policy.[4]

2. It must have been a sailing with convoy from the usual place of rendezvous appointed by Government, at which ships have been accustomed to assemble; and the ship was protected in sailing from the particular port to this accustomed place of rendezvous, to which she could proceed directly, and was not obliged to take a convoy from that port to it.[5]

3. The warranty to depart with convoy extended to sailing with convoy throughout the whole of the voyage, such as the Government thought fit to appoint, as a sufficient protection for ships on the voyage assured, whether for the whole or part only, unless the ship was separated from the convoy by inevitable accident or irresistible necessity, as stress of weather,—in which case, if the captain did all in his power to keep with or rejoin convoy, he could bear away for his port of destination.[6]

4. If the ship was not at the place of rendezvous in time to join the convoy, or if, by negligence or delay, a ship did not get under weigh with the convoy, or if she afterwards left the convoy, so as to lose the benefit of its protection,—this was a breach of the warranty, which discharged the underwriters.[7]

5. The captain had to obtain the sailing instructions, without which he could not understand and answer the signals, nor know the place of rendezvous, in case of dispersion by storm, or by an enemy, or any other

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[1] Blackhurst *v.* Cockell, 3 T. R. 360.
[2] Colby *v.* Hunter, 3 C. and P. 7.
[3] Kirby *v.* Smith, 1 B. and A. 672.
[4] Mar. 288; 2 Park, 694; 1 Arn. 605.
[5] Mar. 289; 2 Park, 701; 1 Arn. 606.
[6] Mar. 290; 2 Park, 702; 1 Arn. 613.
[7] Mar. 291; 2 Park, 707; 1 Arn. 612.

accident,—unless from stress of weather, or other circumstances, he was absolutely prevented from obtaining these instructions, after using all due diligence to obtain them:—in such case, if he departed with convoy, and took the first opportunity of obtaining his instructions, this was held to be a sailing with convoy.[1]

IV.—THAT SHIP OR GOODS ARE NEUTRAL PROPERTY.

Neutral property, as understood under this warranty, is property which belongs to the subjects of a state on friendly terms with the belligerent powers; and, if this warranty be not complied with, the assurance was not merely void for breach of warranty, but was absolutely void from the beginning on account of fraud. Under this warranty, the following general principles were established:—

1. If the ship or property was warranted neutral, they had to be so at the time the risk commences, and to continue so, as far as concerned the assured; but the assured did not warrant they would continue so during the voyage, until the end of the risk.[2]

2. If the ship or goods were not neutral, the contract was void, and the assured could not recover, though the loss happened by perils of the sea.[3]

3. A ship forfeited her neutrality if she did, or attempted to do, any act or deed contrary to the law of nations, or in contravention of the particular treaties with the belligerent powers.[4]

4. In order to falsify this warranty, or to prove a breach or forfeiture of neutrality, amounting to a breach of neutrality, there was required a sentence of condemnation by a court of Admiralty, or other court of competent jurisdiction in matters of prize; and a sentence procured by the captors in the country of a co-belligerent, or in their own country, was held good; but, if condemned by the consul of a belligerent power resident in a neutral state, the sentence had no authority in the courts of this country.[5]

5. If a ship was condemned for carrying simulate papers without leave, the underwriters were discharged; but they were not, if leave had been given to carry such papers.[6]

6. The sentences of foreign courts, of competent jurisdiction, in matters of prize, were held conclusive evidence in actions on policies of assurance, on every subject within their jurisdiction, and on which they professed to decide; but the ground of the decision was not to be collected from inference or by argument, but it had to appear by specific affirmation; and if a ship had been condemned as prize, and the grounds of the sentence manifestly contradicted that conclusion, the underwriters were not discharged.[7]

7. If it evidently appeared, that the sentence had proceeded upon the ground of the property not being neutral, this was held conclusive evidence against the assured that he had not complied with the warranty, and the underwriters were thereby discharged; but where the cause of condemnation of a ship did not appear to be, on the specific ground, material to the point at issue, parole evidence was admissible to explain it.[8]

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1 Mar. 291; 2 Park. 699; 1 Arn. 611.
2 Mar. 311; 2 Park, 715; 1 Arn. 617.
3 2 Park, 714; 1 Arn. 618.
4 Mar. 314; 1 Arn. 628.
5 Mar. 333; 2 Park, 718; 1 Arn. 649.
6 2 Park, 729; 1 Arn. 630.
7 Mar. 335; 2 Park, 753; 1 Arn. 642.
8 Mar. 335, 341, 425; 2 Park, 718, 724; 1 Arn. 645.

8. If a ship had been condemned as a good and lawful prize, without stating any special ground of condemnation, this has been held conclusive evidence that the property was not neutral.[1]

9. Neutral ships had to submit to visitation and search upon the high seas by the lawfully commissioned cruisers of the belligerent nations; and a refusal to submit to such visitation and search was confiscation of the property so withheld.[2]

10. Neutrals were prohibited from carrying contraband of war in time of war. What articles were to be held as contraband of war depended upon the particular character of the war at the time carried on; and such goods forfeited freight and expenses.[3]

This right of search is, however, greatly curtailed, if not in effect almost abrogated, by the Treaty of Paris, 1856, by which it was declared:—that "*the neutral flag covers enemy's goods*, with the exception of contraband of war:"—and that "neutral goods, except contraband, are not liable to capture under the enemy's flag."

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[1] Mar. 342; 2 Park, 727; 1 Arn. 647.
[2] Mar. 330; 2 Park, 760; 1 Arn. 634.
[3] Mar. 53; 1 Arn. 738.

VIII.—OF REPRESENTATIONS, MISREPRESENTATIONS, AND CONCEALMENT.

I.—REPRESENTATION.

A representation is some statement made by the assured or his agent, either verbally or in writing, not inserted in the instrument, of some such collateral (concurring) facts and circumstances connected with the subject-matter of the assurance, as it is necessary the underwriters should know, in order to enable them to calculate the risk. This representation may be either *affirmative*, where something is stated to be true; or *promissory*, where something is promised to be done; or *material*, when it is of any fact or circumstance, the knowledge or belief of which may be reasonably supposed to influence the underwriter in undertaking the risk or calculating the premium.[1]

The distinction between a warranty and a representation has been thus ably stated:—"Where a representation is material, it must be complied with;—if immaterial, that immateriality must be inquired into and shown; but if there is a warranty, it is part of the contract that the matter is such as it is represented to be;—therefore, the materiality or immateriality signifies nothing; the only question is as to the mere fact."[2]

A representation may be made by the assured, his broker, or agent, at the time of effecting the assurance; and, when once made, it is held as binding, unless it can be shown to have been afterward altered or withdrawn.[3] In one case, goods were assured as on board the *Hermon*, without any addition of country or place, and she was not represented to be of any particular country at the time the policy was subscribed, although the broker, when the slip was signed, said she was an American:—the ship having been captured by the Spaniards, was condemned as prize for want of being properly documented, according to treaty:—but, in an action on the policy, the court held, that though in fact the ship was an American, she was not represented as such at the time the policy was effected, and there being no undertaking or warranty in the policy that she was an American, she did not require to be documented as such.[4] But in a subsequent case, where the broker had made a representation as to the equipment of the ship at the time the underwriters put their names upon the slip, but no conversation had afterwards taken place on the subject, either when the policy was signed or at any other time:—it was held, that as the representation had taken place when the assurance was talked of and the terms agreed upon, it must be referred to the policy, and treated as a representation which ought to be substantially complied with.[5]

At the time of effecting the assurance, the assured, or his broker, or agent, is bound to disclose to the underwriter all that they know as to the actual state of the vessel, or that may lead, by direct inference, to a suspicion of her fate. As where a vessel sailed from a port six hours before another, in which the owner of the first followed, and having met with rough weather on the passage, he arrived before the first vessel, and then effected

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1 Mar. 345; 1 Arn. 489, *et seq.*
2 *Per* Lord Eldon, in M'Morran *v.* Newcastle Fire Ins. Co., 3 Dow, 255.
3 Mar. 346; 1 Arn. 490.
4 Dawson *v.* Atty, 7 East, 367.
5 Edwards *v.* Footner, 1 Camp. 530.

an assurance on her, as "all well in port" on a certain day, her day of sailing:—it was held, that these others particulars were material to be communicated to the underwriters.[1] And if, at the time of effecting the assurance, it is represented to the underwriters that the vessel was to sail on a certain day, when she had actually sailed some days previous,—or that she was ready to sail, when in fact she did not sail for more than a month afterwards,—the underwriters will be discharged.[2]

Although the assured on *the ship* is thus bound by a representation as to the time of sailing, which must be substantially complied with, yet if the assured on *the goods* represent the time of the ship's sailing, this, in regard to him, is only speaking from probable expectation, and, as he has no control over that event, this will not conclude him, if such representation has been made honestly and in good faith.[3]

If a statement be made or information given, as mere matter of opinion, or belief, or expectation, this will not amount to a representation, so as to affect the policy; because the underwriter ought to inquire into the ground of the truth of the belief or expectation; and if he omit to do so, he is understood to take the chance of its being true or not upon himself.[4] As where a broker, on effecting an assurance on the ship, while the vessel was on her outward voyage, represented that a cargo was ready for her, and that she was sure to be an early ship:—this was held to amount only to the expression of belief or expectation, and the underwriters were held liable, although, from the delay in loading the cargo, the homeward voyage was changed from a summer to a winter risk.[5]

It is doubtful, if a fact, stated to the first underwriter as an inducement to him to subscribe the policy, is to be taken as if it had been made to all the subsequent underwriters of the same policy, without the necessity of proving the repeating of it to each.[6] At all events, it must be proved, that the representation by an assured on goods was made to the first underwriter, or to the subsequent individual underwriter himself;[7] and this rule will not apply to an underwriter on a different policy, on the same vessel or goods, and against the same risk, as, though the knowledge of or the concealment from the individual underwriter may be material, the knowledge or ignorance of subsequent underwriters of a separate and distinct policy.[8]

The representation must always be of some matter collateral to the contract of assurance, and not of any matter which is inconsistent with, or directly contradicts, the terms of that contract; as if the condition is, that the vessel shall sail on or before a certain day, evidence will not be received that the party wrote or said she would not sail till a later day.[9]

Where, by the representation, the voyage is stated in the written information as less than that which is described in the policy, though the voyage actually performed be greater than that described in the representation, yet if it be within the policy, it is protected.[10] And though the representation as to the intended course of the voyage be not true, yet, if there is no fraud, and if the voyage is performed in conformity with the

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1 Kirby *v.* Smith, 1 B. and A. 672.
2 Denniston *v.* Lillie, 3 Bligh's Parl. Ca. 202.
3 Bowden *v.* Vaughan, 10 East, 415.
4 Mar. 348; 1 Arn. 509.
5 Hubbard *v.* Glover, 3 Camp. 313.
6 Marsden *v.* Reid, 3 East, 372.
7 Bell *v.* Carstairs, 2 Camp. 544.
8 Foley *v.* Tabor, 2 F. and F. 663.
9 Weston *v.* Eames, 1 Taunt. 115.
10 Mar. 353; 1 Park, 436.

established usage of trade, and is within the policy, the assurance will not be avoided.[1]

It is not necessary to make any *representation* as to the seaworthiness of the ship; nor, in an assurance on a homeward voyage, is it necessary to communicate the damages sustained in the outward voyage, and that she stood in need of many repairs to render her seaworthy; nor is it necessary that there be any representation as to the state or condition of the ship on the voyage previous to the assurance being effected.[2] But if information be required as to any matter, it is the special duty of the party proposing to return answers strictly true to the matters required.[3]

II.—MISREPRESENTATION.

A misrepresentation in any material fact or circumstance vitiates the assurance on the ground of fraud, whether the misrepresentation has been made by the assured or his agent, and whether it has proceeded from an innocent mistake, from fraud, or from negligence.[4] And such a misrepresentation or false assertion in a policy renders the assurance completely void, so that the assured cannot recover under it, though the loss should arise from a cause unconnected with the fact or circumstance which has been misrepresented; though such a misrepresentation may have arisen from mistake, ignorance, or accident, without any fraud or any wilful intention to deceive.[5] If the assurer is led to enter into the policy by a false representation of a material fact made by the assured and his agent, and known by them, at the time it was made, to be false, this will make the policy void, though the misrepresentation was not fraudulent.[6]

Thus, where a London merchant, assuring at Leith, represented, contrary to the fact, that he had assured the same voyage at Lloyd's at the same premium as that which was offered to the Leith underwriters, who accordingly subscribed the policy, confiding in the skill and judgment of the London underwriters:—it was held, that this misrepresentation voided the policy, though it was not such as affected the nature of the risk.[7]

The time of sailing may often be material, and a misrepresentation as to this will void the assurance; though it is not material to state the time of sailing, unless where the vessel is a missing ship, or out of her time.

As where the broker was instructed to state that the ship was ready to sail on 24th December, but the broker represented to the underwriter that the ship was in port, when in fact she had sailed on 23d December:—it was held, that this was a material concealment and misrepresentation.[8] And where a vessel sailed fron Elsinore six hours before another one, in which the owner of the first followed, and having met with rough weather on the passage, he arrived before the first vessel, and then effected an assurance upon her, as "all well in port" on her day of sailing:—it was held, that these other particulars were material to be communicated to the underwriters.[9] And, in another case, an assurance was effected upon one ship, at and from Malaga to London, "warranted to sail on 10th October;" and it was communicated to the underwriters that this vessel and another had

1 Mar. 354; 1 Park, 430; 1 Arn. 516.
2 Mar. 336; 1 Park, 492; 1 Arn. 566.
3 Haywood *v.* Rogers, 4 East, 590; Freeland *v.* Glover, 7 East, 457.
4 Mar. 347; 1 Park, 442; 1 Arn. 495.
5 Mar. 348; 1 Park, 404; 1 Arn. 494.
6 Anderson *v.* Thornton, 8 W. H. and G. 425.
7 Sibbald *v.* Hill, 2 Dow, 263.
8 Fillis *v.* Brutton, 1 Park, 414.
9 Kirby *v.* Smith, 1 B. and A. 672.

sailed from Malaga on 10th October, and the underwriters knew, from the entries at Lloyd's, that the second vessel had arrived at London some days before; but the assured also knew that the captain of that vessel had seen the first vessel off Oporto on the 21st October, when they had parted company, by reason of a gale coming on, and the assurers did not communicate this fact to the underwriter: the second vessel arrived on 30th October, and the assurance on the first vessel was effected on 3d November:—it was held, that the fact of the two vessels being in company on 21st October, and one of them having arrived five days without the other, was a circumstance material to be communicated to the underwriters.[1]

Where, however, the assurance is on goods, and the assured represent the vessel as to sail in a few days, the policy will not be void, though the vessel do not sail for a month afterwards,—it being held, that the assured on goods has not control over the sailing of the vessel, and that, therefore, the representation, if fairly made, and from the best information he has, ought not to conclude him.[2] But where an assurance was effected on wines from Oporto to London on 12th November, at which time the assured was in possession of two letters from their correspondents at Oporto, —the first, dated 10th October, stating, "We are loading the wines on board the *Stag*, Captain W., who pretends to sail after to-morrow,"—the other, dated 13th October, enclosing bills of lading, which were filled up "with convoy,"—which letters the assured did not communicate to the underwriters:—it was held, that these were material to be communicated.[3]

If a broker, in effecting an assurance on the ship, should misrepresent the nature of the cargo which she is to carry, but which neither is inserted in the policy nor induces the underwriter to accept the risk, this misrepresentation is not material, and will not vitiate the policy. As, where it was stated that the vessel was to carry no more rock-salt than was sufficient for ballast, but the vessel, being perfectly seaworthy, sailed deeply laden with rock-salt: this misrepresentation was held not material.[4]

III.—CONCEALMENT.

Concealment is the suppression, the keeping in or back, of any fact or circumstance which may be material to the risk, and which, if the underwriter knew, might prevent him undertaking the risk at all, or only at a higher rate of premium; and this concealment will be fatal to the policy, whether it proceed from accident, negligence, or mistake.[5]

The general rule is, that, at effecting the assurance, the assured or his agent is bound to disclose all that he knows or has heard as to the state of the ship, or that may lead, by direct inference, to suspect that state, and to communicate every species of intelligence he possesses, which can enable the assurer to determine whether he will undertake the proposed risk at all, or at what rate of premium he will undertake it.[6] And if any concealment be made, it is fatal to the insurance, though the circumstance, or the information concealed, should turn out to have been unfounded.[7]

As, where a man arrived at Greenock, knowing the loss of the ship assured, and meeting a friend and intimate acquaintance of the assured,

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1 Westbury *v* Aberdein, 2 M and W. 267.
2 Bowden *v*. Vaughan, 10 East, 415.
3 Bridges *v*. Hunter, 1 M. and S. 15.
4 Flinn *v*. Headlam, 9 B. and C. 690.
5 Mar. 307; 1 Park, 404; 1 Arn. 536.
6 Mar. 307; 1 Arn. 538.
7 Lynch *v*. Durnsford, 14 East, 494.

and a partner with him in some other adventures, communicated the intelligence of that ship having been taken, and this friend *desired that it might be concealed;* the same day that person had a conversation with the owner's clerk; and, after that conversation (which it did not appear he had communicated to his master), the clerk, by the owner's desire, wrote to get an assurance effected:—it was held, that, as this assurance would not have been effected unless this intelligence of the capture had arrived, and, as that was not communicated, the assurance was void.[1] And where the assured received, on 24th November, a letter from Lisbon, dated the 8th of that month, stating, that the ship was then *ready to sail*, and did not make assurance until 2d December, after the arrival of another vessel which had sailed at the same time, but did not then communicate the letter to the underwriters:—this was held to be a concealment which voided the assurance.[2]

So, also, where the shipper of goods at a port abroad, on 30th November wrote to the consignee in London, that he thought the captain would sail to-morrow, "but, should he not be arrived in your port, you will make assurance as low as you can on my account;"—this letter was received on 13th December, and next day an assurance was effected, without communicating this letter to the underwriters: it appeared that it was not the custom for ships to sail on this voyage without a fair wind, and it was often performed in four or five days, and, when the weather was not favourable, in about ten days; the ship in question did not, in fact, sail until 24th December:—and the court held, that this was a material concealment.[3]

But it is not always material to communicate the time of sailing, unless the ship be a missing ship, or out of time, as in the above cases. As, where it was objected, that a letter stating the time of the ship's sailing ought to have been communicated, the court held, that, as the ship was not out of time at the date of effecting the assurance, the concealment was not material, and that though circumstances might make it necessary to communicate the time of sailing, this was not to be taken as a general rule, except in the case of a missing ship.[4] Where, however, wines were assured from Oporto to London on 12th November, at which time the assured were in possession of two letters from their correspondents at Oporto,—the first letter, dated 4th October, stating, "We are loading the wines on board the *Stag*, Captain W., who pretends to sail after to-morrow;" and the other, dated 13th October, enclosing the bills of lading, which were filled up "with convoy,"—which letters the assured did not communicate to the underwriters:—it was held, this was a material concealment.[5]

In all such cases, the question is, whether there has been a full and fair disclosure of all circumstances, or a concealment, fraudulent, if designed, or, if not designed, yet varying materially the object of the assurance, and changing the risk undertaken.[6] As where an assurance, at and from Heligoland to the Baltic, was effected about 13th August, while the ship was lying in the Thames, from which she did not sail until the 27th August, but she arrived at Heligoland, sailed on her voyage, and was lost:—the jury found, that the risk was not materially increased by the delay which intervened:—and, therefore, the court held, that the delay was not a fact

[1] Stewart *v.* Dunlop, 1 Park, 446.
[2] M'Andrew *v.* Bell, 1 Esp. 373.
[3] Willis *v.* Glover, 1 B. and P. *n. r.* 14.
[4] Foley *v.* Moline, 5 Taunt. 430.
[5] Bridges *v.* Hunter, 1 M. and S. 15.
[6] Mar. 358.

necessary to have been communicated;—that when an assurance is made at and from a place, it imports either that the ship is, or shortly will be, there; but does not necessarily import that she is at the place at the very time, so as to make the assured guilty of deception if she be not.[1] And where a broker, in effecting an assurance for the homeward voyage, whilst the ship was on her outward voyage, represented that her cargo was ready for her, and that she was sure to be an early ship:—this was held only to amount to an expression of expectation or belief, and that the underwriters were liable, although, from the delay in loading the cargo, the voyage home was changed from a summer into a winter risk.[2] But where a yacht was assured on 28th January, afloat, "at and from Bristol to London," and did not sail till the 17th May, and was run down on the 21st May:—it was held, that this delay, unaccounted for, was unreasonable, and discharged the underwriters, although the vessel was of a kind that does not sail in the winter-time.[3]

It is another general rule in all assurances that the underwriters should be informed of every *material* circumstance within the knowledge of the assured or his agent; and here the proper inquiry is—If any particular fact or circumstance was really material?—and not, Whether the party believed it to be so? In all cases it is the duty of the assured to disclose (make known) all material (essential and important) facts within his knowledge; and, to allow the contrary, would lead to frequent suppression of information, and it would often be extremely difficult to show that the party neglecting to give this information thought it material. But if it be held *that all material facts be disclosed, it will be the interest of the assured* to make a full and fair disclosure of all the facts within his knowledge.[4]

Thus, as an assurance on a ship may be annulled by the ship's unseaworthiness, occasioned by overloading or bad stowage, by which the danger or difficulty of the navigation may be increased, and the premium of assurance thereby raised,—so, the not stating the nature of the cargo, if the proportion of *dead weight* in it must lead to bad stowage, may be such a concealment as will destroy the policy; but it will not be so if the underwriter knew, or had reason to believe, that the cargo would include *some* proportion of dead weight, though, at the time of effecting the assurance, the assured's agent did not know what that proportion was.[5]

There is no rule of law affecting underwriters with notice of whatever may be in Lloyd's lists, beyond such matters, at all events, as are of general knowledge: if, therefore, anything affecting the particular risk is contained in those lists and known, it is material to disclose it;[6] and the announcement in the *foreign* lists filled at Lloyd's, of the sailing of a ship out of the port from which she was assured, does not dispense with the assured disclosing a letter from his captain, before the assurance was effected, announcing the day of his intended departure;[7] and, as stated by a learned judge, "The materiality (importance) of the list at Lloyd's depends entirely on the silence of all parties respecting the day of the vessel's sailing; for, where there is no wrong representation about it,—no

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1 Hall *v.* Cooper, 14 East, 477.
2 Hubbard *v.* Glover, 3 Camp. 313.
3 Palmer *v.* Marshall, 8 Bing. 317.
4 *Per* Bayley, J., and Littledale, J., in Lindenau *v.* Desborough, 8 B. and C. 592.
5 Foley *v.* Tabor, 2 F. and F. 663.
6 Morrison *v.* Universal Marine Co., L. R. 8 Ex. 40.
7 Elton *v.* Larkins, 8 Bing. *n. c.* 198.

communication calculated to mislead,—there the document at Lloyd's is competent evidence, where the knowledge is common to both."[1]

But where a ship was assured at and from Pictou, in Nova Scotia, to Liverpool; immediately before effecting this assurance a letter was received from the captain, dated Pictou, 11th May, stating that, from the damage received on the outward voyage, the ship was then unseaworthy, and standing in need of a great many repairs: she sailed on the 2d September: —it was held, that the communication of this letter was as little necessary to show the ship's probable stay at Pictou, as to show whether she was seaworthy before the commencement of the voyage;—that, if the underwriters had wished for particular information, they ought to have asked for it;—and that they might, if they thought necessary, have taken a warranty as to the time of sailing.[2]

Yet, in another case, the London agent of the foreign owners of a steamship was instructed by them to get the ship assured for a year from 21st January, and he employed a firm of assurance-brokers to effect the assurance, when, on 15th January, they applied to an underwriter to become an assurer:—on that day the agent received a letter from the captain, stating that the ship had been aground, and had received some heavy blows, and had made her way, in a sinking state, into the port of Carthagena, where she then was; and, on the same day, he communicated this letter to the assurance-brokers, but they did not communicate it to the underwriter, who, next day, agreed to assure for £3000, and debited the brokers with the premium: on the 22d, the agent sent to Lloyd's an extract from the captain's letter, by which the underwriter was, for the first time, informed that the ship had been aground, and he then wrote the brokers that he did not consider "my risk commences until the vessel has been surveyed and repaired,"—which letter the brokers did not answer, and they remained debited in his books:—on 2d April, the vessel was surveyed and reported to be quite tight and fit for any kind of voyage; and, after several voyages, she was totally lost:—it was held, that there had been no passing from the objection to the concealment of the vessel's having been aground, and that the concealment of this material fact made the assurance void.[3]

Under an assurance "at and from" the ship's *port* of loading, the rule is, that *port* means the same as place, and that the ship's port of loading must be one place; and, should she receive damage in that port previous to sailing, and the captain does not communicate this accident to his owners for the information of the underwriters,—this concealment prevents the owners from recovering for such damage. As where, on 25th October, an assurance was effected on a ship, at and from her port of loading to her port of discharge; and it appeared that, on 25th July preceding, the ship, whilst in her port of loading, was driven on a rock by a storm, but got off without appearing to have suffered material damage; and the captain afterwards wrote a letter to the owners, without communicating the accident, which letter reached them on 5th October; and the ship afterwards arrived at her port of discharge, where the captain made a protest, detailing the accident, and stating that the planks of her bottom must have been chafed, and her bottom otherwise injured by striking on the

1 *Per* Parke, B, in Mackintosh *v.* Marshall, 11 M. and W. 127.
2 Beckwith *v.* Sydebotham, 1 Camp. 115. 3 Russel *v.* Thornton, 6 H. and N. 140.

rock:—it was held, that the owners could not recover as for an average loss from the accident, for the captain was bound to communicate the accident, and, for want of such communication, the consequent damage was an exception out of the policy.[1]

But where an assurance-broker, having, by post, on the 15th, received instructions to assure a ship, had prepared the policy, and, on the 17th, took it to the Royal Exchange and got it subscribed by the underwriter, and then he went to an office he had in the Coal Exchange, where his business letters were usually directed, and there he found a letter, stating the loss, also on the 15th, of the ship on which he had just effected the policy:—in an action against the underwriter, it was held, that the broker had a right to presume he had all the information on which he was to effect the assurance, and that there was not that want of diligence that would annul the assurance.[2]

But, in general, in making an assurance on a homeward voyage, it seems sufficient to make a full and true representation of the state the ship was in at the time of the last intelligence from her, without communicating all her previous proceedings. As, where an assurance was effected in September, on a vessel "at and from the ship's first place of trade on the coast of Africa:" —the duration of an African voyage is usually several months, sometimes twelve months or more; and, in this case, the vessel arrived on the coast of Africa in August, and, in February following, her then commander wrote to the owners, informing them of an attack which had been made on the vessel, at another place of the coast, by the natives, who had killed the captain and several of the crew, and wounded others, by which, and by a fever, the crew had been reduced to five, and those all sickly, and not a man to be procured at hand; that they were plundered of their clothes, &c., their cabin stores were exhausted, and they knew not what to do; but, in a second letter, dated 21st April 1800, from the Gamboon river, their arrival there was announced as on the 24th March preceding, but that the natives, finding them weakly handed, and their goods taken from them, did as they pleased; that they had then nine men on board, but their provisions were run very low; and that he had mentioned several parts of the cargo *in his last letter*, and expected to ship the rest, and sail by the end of the next month:—in an action on the policy, it was held, that the non-production of the first letter was not a fraudulent concealment, and that, as the second letter referred to a former one, if the underwriters wished to know the causes of the previous difficulties, they might have called for that letter, and that, as they had not done so, they could not set up its non-appearance as a concealment.[3]

An assured *on goods* is not bound to make any representation as to the state of them at the time of assuring, though, if a loss happen from their bad condition, the assured cannot recover for that which he himself has occasioned. As where, in an action on a policy upon hemp, the loss was alleged to be by fire, and the underwriter proved that the hemp was damaged, and consequently liable to ferment and take fire; but, failing to prove that the fire had in fact originated from this cause, he contended that the underwriter was discharged, because he was uninformed of the state of the hemp; but it was held most decidedly, that this statement

[1] Gladstone *v.* King, 1 M. and S. 35. [2] Wake *v.* Atty, 4 Taunt. 493.
[3] Freeland *v.* Glover, 7 East, 457.

was unnecessary, and that it would introduce endless confusion and perpetual controversies, were such a duty to be imposed upon the assured.[1]

If the assured or his agent has any information as to the state of the ship, the trade in which she is to be engaged, the time of her sailing, or of her expected arrival, or of any facts affecting the risk,—concealment of this information will be fatal to the assurance.[2] As where goods were shipped at Sydney on board one ship, and, by another ship that sailed after her, the shipper wrote to his agent in England, that, if he received that letter before the first ship arrived, to wait for thirty days, to give every chance of her arrival, and then to effect an assurance on the goods; the letter was received, and the agent having waited more than the thirty days, employed a broker to effect an assurance, and handed the letter to him; the broker told the underwriter when the first ship sailed, and when the letter ordering the assurance was written, but he did not state when it was received, nor the order to wait thirty days after the receipt of it before effecting assurance: the first ship never arrived:—in an action on the policy, no fraud was imputed to the assured; but underwriters were called for the assurer, who gave their opinion, that the matters not communicated were material, and the jury being of opinion that a material part of the letter had been concealed, found a verdict for the underwriter:—it was held, that the opinion of the underwriters was properly received, and that, even without it, the jury would have been bound to find that the part of the letter not communicated to the underwriter was material, and that, consequently, the policy was void.[3]

It is, however, necessary to communicate *facts* and circumstances only, and not merely the *opinion* which the assured or his agent may form upon these facts, or the effect produced by them on the public mind.[4] As where an assured on a ship, "at and from Riga," received a letter from his correspondent at Riga, stating that a great sensation had been produced there by an order of the Russian Government to send the papers of all ships to St. Petersburg:—it was held sufficient to communicate the fact of the papers being sent to St. Petersburg, without stating the sensations and apprehensions produced by it.[5] And if it is merely stated that the assured *expects* something to be done or something to happen,—this will not void the assurance, though the event be different from the expectation.[6] Thus, a broker, at effecting an assurance on a ship while she was on her outward voyage, stated that a cargo was ready for her, and that she was sure to be an early ship; this was held to be only the expression of an expectation and belief, and the underwriters were held liable, though, owing to the delay in loading the cargo, the voyage home was changed from a summer to a winter risk.[7] And when the broker, in effecting an assurance on the homeward voyage, "at and from Messina to her port or ports of discharge in the Channel," stated to the underwriter that "the ship was then (30th June) either near Messina or at Messina, or on her homeward voyage," when, in reality, the *ship did not sail from Falmouth for two days after the day* this statement was made;—it was held, that this was merely the broker's opinion, formed from his knowing the time the ship sailed from

[1] Boyd *v.* Dubois, 3 Camp. 133.
[2] Mar. 358; 1 Park, 408; 1 Arn. 372.
[3] Rickards *v.* Murdoch, 10 B. and C. 527.
[4] Mar. 365; 1 Arn. 555; Anderson *v.* Pacific Co., L. R. 7 C. P. 65.
[5] Bell *v.* Bell, 2 Camp. 475.
[6] 1 Park, 444.
[7] Hubbard *v.* Glover, 3 Camp. 313.

London, and was merely the expression of his calculation, which, though erroneous, did not, in the absence of fraud, make the policy null.[1]

If an assurance is made *on profits*, the valuation should be reasonable; if it be excessive, the fact is material, and an omission to bring the excessive valuation to the knowledge of the underwriter will avoid the policy.[2]

The underwriter is presumed to be acquainted with the general usage and practice of the trade he assures, even although it may not be uniform; and, therefore, the assured need make no communication or disclosure as to that usage.[3] As, on an assurance to the West India Islands, where it is the usage of the trade for the ship to proceed to an adjoining port, and there tranship the cargo in shallops to the particular places of destination, —the underwriters will be liable for a loss happening after such transhipment, though no information of this usage was given them.[4]

But where the trade is of an exceptional kind, or new, the underwriter will not be presumed to have notice of all its peculiarities, and these, if they are of a kind to affect the risk, must be communicated to him.[5]

If, in consequence of the vessel having sailed overloaded, the underwriters are applied to for liberty to go into port and discharge part of the cargo, it is only necessary to communicate to them that the ship was too deep in the water.[6]

In questions of concealment, the evidence of other underwriters will be admitted to show, whether, in their judgment, the concealment of any fact was material;[7] but though the opinion of *brokers* may be asked as to matters of *practice* in their profession, they cannot be asked their opinion as to any of the points on which a verdict has to be returned in an action against a broker for negligence in effecting a policy,—viz., whether the fact concealed was material or not, and whether it ought to have been communicated to the underwriters.[8] But when a letter from the captain of the ship in which were the assured goods, stating that the voyage was altered, was put into the hands of the broker, and he was told that he must do the needful,—it was held, that brokers might be called to say,—looking at the policies, the invoices of the goods, and the letter,—what alterations in the policies a skilful broker ought to have made.[9]

When an underwriter pleads the concealment from him of any material fact, he is bound to lead some evidence in support of this. As, in an action on a policy of assurance upon a ship, the underwriter pleaded that, at the time of making the policy, the assured, wrongfully and improperly, concealed from him certain facts and information, which the assured before then knew and had received,—that, before the time of effecting the policy, the captain of the ship, at Seville, in Spain, had drawn a bill for the disbursements of the ship: at the trial, the underwriter proved the fact of the drawing of the bill by the captain, which the jury found to be material, and that it was known to the assured at the time the policy was effected; but it was held, that the underwriter ought to have given some evidence of the non-communication to him of this fact in support of his plea.[10]

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1 Brine *v.* Featherstone, 4 Taunt. 867.
2 Ionides *v.* Pender, L. R. 9 Q. B. 531.
3 Mar. 200; 1 Park, 99; 1 Arn. 559.
4 Stewart *v.* Bell, 5 B. and A. 238.
5 Harrower *v.* Hutchinson, L. R. 5 Q. B. 584.
6 Weir *v.* Aberdein, 2 B. and A. 320.
7 Rickards *v.* Murdoch, 10 B. and C. 527.
8 Campbell *v.* Rickards, 5 B. and Ad. 840.
9 Chapman *v.* Walton, 10 Bing. 57.
10 Elkin *v.* Jansen, 13 M. and W. 655.

IX.—THE RISKS OR PERILS ASSURED AGAINST.

Those are called *perils of the sea* which happen to a vessel in the course of her voyage, by the immediate act of God, as it is called, without the intervention of human agency,—as from storms and tempests, rocks and sands, &c. Every accident, therefore, which is caused by the violence of the winds or waves, by dashing or striking against rocks, by stranding, by thunder and lightning, or by any other violent cause, which no human foresight could foresee or prevent, or human strength resist, is attributed to a loss by perils of the sea.[1] But perils of the sea are to be distinguished from those injuries and losses which may be imputed to the owners, or to the negligence or misconduct of the master or mariners.[2]

This subject divides itself into—1. The risks within the common policy; 2. Those excluded by the usual memorandum; 3. The duration of the risk; 4. How and when the risk may be changed; and, 5. To what risks the master and owners are liable.

1.—THE RISKS WITHIN THE COMMON POLICY.

The risks or perils assured against are specially enumerated in the clause of the policy before quoted, p. 405.

1. By that clause the underwriters undertake the risks and perils of arrests, restraints, and detainments of all kings, princes, &c. These are, most commonly, either by embargo or blockade.

An embargo is a proclamation or order of a state, usually issued in time of war or of threatened hostilities, prohibiting the departure of ships or goods from the port of the state. An embargo on ships and goods in the ports of this country, laid on by the sovereign's proclamation, is legal, when such proclamation is not contrary to the laws of nations and of states; but whether an embargo be legal or illegal, the underwriter is liable for the loss occasioned by it, as the injury to the owner, by the detention of the ship or goods, is the same.[3] In one case, a Spanish subject made an assurance of goods for a voyage from London to Alicant, and the assurance was against "restraints and detainments of all kings, princes, and people, of what nation, condition, or quality soever;" and, on the ship's arrival at Corunna, an embargo was laid on her by the Queen of Spain, for the purpose of her conveying troops to Malaga for a war against Morocco, by reason of which the goods were damaged:—it was held, that the assured was entitled to recover against the underwriters for the loss thus sustained.[4]

A blockade is effective when the coasts or ports of an enemy are shut up by an efficient blockading squadron, and due public notification of the blockade has been made to other countries. And though, after such notification, within the knowledge of the assured and the shipmaster, a voyage to the blockaded port is illegal, and the assurance void, yet there has been some qualification and relaxation of this rule, as ships are allowed to clear out, conditionally, for a blockaded port, on the presumption that, before the vessel's arrival there may have been a relaxation,—and the underwriter has to prove, in general, the knowledge of the blockade by the assured

[1] Mar. 164; 1 Park, 136; 2 Arn. 793.
[2] Mar. 386; 2 Arn. 768.
[3] Mar. 403; 1 Park, 168; 2 Arn. 815.
[4] Aubert *v.* Gray, 11 W. R. 27.

or the shipmaster;—this knowledge of a blockade is not to be presumed, merely from the circumstance of the ship, after leaving her port of loading, having put into a port of this country subsequent to the announcement of the blockade in the *London Gazette*,—the knowledge of the captain not being to be presumed on the ground of notice to a state being notice to all the individuals of that state.[1] An assurance on goods is not illegal, where it is part of the contract that, in the event of a blockade, or of being ordered off to proceed to any other port, and there wait or discharge; and while a ship in proceeding up the River Plate to Buenos Ayres, met below Monte Video with a Brazilian frigate, and was detained and sent into Monte Video, and afterwards to Rio Janeiro for adjudication:—it was held, that admitting there was no intention on the part of the master to break the blockade, which had been published in the *London Gazette* previous to the vessel's sailing from this country, the voyage was not illegal in its commencement, as the vessel might have sailed for Buenos Ayres without contravening the law of nations, provided it was a part of the original intention to inquire as to the continuance of the blockade at some port of the blockading country.[2]

But if a vessel sail for a blockaded port before any announcement of the blockade in this country, and if the master at any time during the voyage receive intelligence of the blockade, but notwithstanding he continues the voyage to the blockaded port, and is captured in an attempt to enter it, the assurance, either on ship or cargo, is thereby discharged.[3] And where a vessel with a perishable cargo is destined for a foreign port, which, during the course of the voyage, the master receives information is shut against British vessels, and by orders of the convoy, under which the vessels sail, the master puts into another port, where the cargo is sold for a small sum;—this is not a loss within the policy.[4] Nor, where the port of destination is discovered, in the course of the voyage, to be blockaded by or in the hands of an enemy,—is this a loss within the policy.[5]

See *ante*, "BLOCKADE," p. 281.

2. Under the perils of pirates, rovers, and thieves are included, not merely the attacks of pirates, as such, but also the wrongful and violent acts of individuals, whether as thieves or in the character of a mob.[6] As where a vessel was wrecked, and part of the goods lost, and part got on shore, but while on shore these were plundered and destroyed by the inhabitants;—this was held a loss within the policy.[7] But as the term *thieves* in the policy means thieves assailing from without, the master and owners are liable for *theft or embezzlement* committed by persons on board.[8]

3. Loss by fire is also one of the perils assured against. And if the ship is destroyed by fire, it is of no consequence whether the fire be occasioned by a common accident, by lightning, or by an act done in duty to the state; nor does it make any difference whether the ship is so destroyed by third persons, officers of the Government, or by the captain and crew acting with loyalty and good faith.[9] Under this peril, the assurers are answerable for a loss by fire proceeding from the negligence of the captain

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1 Harratt *v.* Wise, 9 B. and C. 712.
2 Naylor *v.* Taylor, 9 B. and C. 718.
3 Winder *v.* Wise, 1 D. and L. 238.
4 Hodkinson *v.* Robinson, 3 B. and P. 388.
5 Lubbock *v.* Rowcroft, 5 Esp. 50.
6 Mar. 139; 1 Park, 36, 137.
7 Bondrett *v.* Hentigg, 1 Holt, 149.
8 Mar. 186; 1 Park, 36.
9 Gordon *v.* Remmington, 1 Camp. 123.

and mariners. As where a vessel was left in care of the mate, the crew having been previously paid off, and the master proceeded upon business to St. Petersburg in November; the mate continued in charge of the vessel till 9th January following, and on that day he lighted a fire in the cabin, and in the evening went on board another vessel lying contiguous;—at twelve o'clock at night, he looked out from the ship he was in, saw everything was quiet, and went to bed; but in the morning he was alarmed by fire, and the ship was consumed:—it was admitted that the loss arose from the negligence of the mate, then in charge of the ship, in his lighting a fire in the cabin, and not seeing it properly extinguished: but it was held notwithstanding that the underwriters were liable.[1]

4. Under a warranty of "free from mortality and jettison," the underwriters are liable, if death is occasioned by the perils of the sea. As where a policy was effected on living animals, warranted "free from mortality and jettison," and during the voyage some of the animals, in consequence of the agitation of the ship in a storm, were killed, and others from the same cause received so much injury that they died before the termination of the voyage:—it was held, that this was a loss by perils of the sea for which the underwriters were liable.[2] And where horses were warranted "free from mortality and jettison;" and in the course of the voyage, and in consequence of the agitation of the vessel in a storm, the horses broke down the partitions, and by their kicking, wounded and bruised one another so much that they all died:—this was held to be a peril of the sea, and that the assured was entitled to recover.[3]

But if the death was natural, or occasioned by mere disease, the underwriters are not liable.[4]

5. It has been questioned, what perils are comprehended under the expression, "perils of the sea," and the general words of the policy, "all other perils, losses, and misfortunes."

Thus in an assurance on a ship, it has been held that where a vessel has to be moved from one part of a harbour to another, and it becomes necessary to send two of the crew on shore to make fast a new line, and to cast off a rope by which the ship was made fast, and these two men, not being allowed by the pressgang to cast off the rope, but being pressed and carried away, and, in consequence of the rope not being cast off, the vessel went ashore and was lost:—this was a loss by perils of the sea.[5] But if a ship be driven by stress of weather on an enemy's coast, and, though not materially damaged, is there captured:—this is not a loss by perils of the sea, but by capture, for which the assured can only recover under an assurance against loss by capture.[6]

Where, by a special warranty, the assured were precluded from recovering for a loss by capture, neither could he recover for any previous loss by perils of the sea, which the subsequent total loss rendered immaterial.[7] And as a loss must be ascribed to its *immediate* cause, so, where a ship was hove down on a beach to be repaired, and the tide carried away her supports, in consequence of which she fell down and was bilged:—this was not a loss by a peril of the sea; for, though the tide was the *remote*

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1 Busk *v.* Ro. Ex. Ass. Co., 2 B. and A. 73.
2 Lawrence *v.* Aberdein, 5 B. and A. 107.
3 Gabay *v.* Lloyd, 3 B. and C. 793.
4 Mar. 439.
5 Hodgson *v.* Malcolm, 2 B. and P. *n. r.* 336.
6 Mar. 374; 1 Park, 136.
7 Livie *v.* Janson, 12 East, 648.

cause, by carrying away the shores, yet the *immediate* cause was the damage sustained by the falling, and that happened on land.[1] So, also, where the loss arose immediately from the perils of the sea, though it was remotely owing to the negligence of the master and mariners,—still it is a loss from perils of the sea.[2]

In a policy on a ship for twelve months, "at sea and in port," it became necessary to place her in a graving-dock to be repaired, and whilst there, by the violence of the wind and the weather, she was thrown over on her side and bilged:—in an action on the policy, this was held to be a loss occasioned by the violence of the wind and the weather, and to fall within the general words of the policy, "all other perils, losses, and misfortunes, that have or shall come to the hurt, detriment, or damage of the said ship."[3]

So, also, in an action on a policy of assurance on goods in the common form, the ship and goods were sunk by another ship firing on her at sea, mistaking her for an enemy:—it was held, that the assured was entitled to recover under a statement of the particular circumstances, for this loss was within the general words of the policy, "all other perils," &c.[4] Where, also, in order to prevent a quantity of dollars on board from falling into the hands of the enemy, the captain, at the time of capture, threw them into the sea; although this was not a loss by throwing overboard for the purpose of lightening the vessel, yet it was held to be a loss of the same kind, and to be comprehended within the general words, "all other losses and misfortunes,"—these words being used to enlarge the construction of the terms by which particular losses are described, and to extend them to cases coming nearly, though not exactly, within the specified losses.[5] And where a ship, having the assured goods on board, was stranded within the meaning of the policy,—it was held, that the underwriters were liable for a partial loss on the goods, although the stranding might have been occasioned, remotely, by the negligence of the crew in not providing a rope of sufficient strength to fasten the vessel to the shore.[6]

If the cargo be so damaged by the perils assured against as to be utterly useless and valueless, though it may still be in existence in kind, the assured will be entitled to recover from the underwriters as for a total loss. As where a ship, with a cargo of fruit, is forced, by stress of weather, into a port out of the course of her voyage, but, during the course of the voyage, the fruit received so much damage from sea-water as to be completely rotten, and was prohibited by the Government to be landed; the ship was also so much damaged as to be unable to proceed, and the fruit had to be thrown overboard:—this was held to be a total loss.[7] And where hides were assured from Valparaiso to Bordeaux, warranted free of particular average unless the ship be stranded; and the ship arrived at an intermediate port in the course of the voyage, where the hides were found to be in such a state of incipient putrescence, occasioned by a leak in the vessel, that it would have been impracticable to carry them, as hides, to the port of destination,—they being in such a state that they must either have been annihilated by the putrefaction or thrown overboard; and they were accordingly sold for

[1] Thompson *v.* Whitmore, 3 Taunt. 227.
[2] Walker *v.* Maitland, 5 B. and A. 171.
[3] Phillips *v.* Barber, 5 B. and A. 161.
[4] Cullen *v.* Butler, 5 M. and S. 461.
[5] Butler *v.* Wildman, 3 B. and A. 398.
[6] Bishop *v.* Pentland, 7 B. and C. 219.
[7] Dyson *v.* Rowcroft, 3 B. and P. 474.

one-fourth their value:—this was held to be a total loss in its nature.[1] So, also, where the assurance was on linen in packages, each containing a number of pieces, and it was agreed to pay average on each particular package;—the vessel shipped a quantity of water, by which most of the packages were damaged, though many of the pieces in each package were undamaged;—and the assured, being desired by the underwriters to act for the best, sold the whole at a loss of twenty-two per cent. on the whole amount:—it was held, that the clause in the policy was introduced for the benefit of the assured, and did not exclude him from his claim to a general average, and that, though some entire packages were uninjured, they were still to be included in the average.[2]

But if the goods are warranted free of *particular average*, and *a part* of the goods is wholly lost, but the remainder subsists in specie, though much damaged, and not utterly useless and valueless,—the assured is only entitled to recover as for a total loss upon that part which was, in fact, wholly lost; and as to the remainder, which was saved in specie, though much deteriorated, the underwriters are exempted from liability by this warranty of the owner.[3]

See the following section.

II.—THE RISKS EXCLUDED BY THE MEMORANDUM.

By the memorandum in the policy, the underwriters are warranted free from average or partial loss—1. On corn, fish, salt, fruit, flour, or seed, unless general, or the ship be stranded; 2. On sugar, tobacco, hemp, flax, hides, and skins, under five per cent.; and, 3. On all other goods, and on ship and freight, under three per cent., unless general, or the ship be stranded.[4] In order to render the underwriters liable for partial losses, the loss must amount, on any of the enumerated articles that had been damaged, to three or five per cent., without charges. Under the term "corn" are comprehended every kind of grain, and pease, beans, and malt, excepting rice; but the word "salt" does not comprehend saltpetre.[5]

As used in assurance, the words "free from average unless general" mean, that the underwriters are not liable for any partial loss on memorandum goods under the specified rates, unless that loss be of the nature of a general average, for which there must be a general average contribution;[6] but, if the loss be of the nature of a general average, the assured is entitled to recover, however small it may be.[7]

It is not, therefore, every damage the excepted articles assured may sustain which will entitle the assured to claim indemnification from the underwriters, even though these articles should be so much damaged during the voyage as, when arrived at the port of destination, to be worth less than the freight, provided they so arrive in specie, unless in the case of stranding, or of a general average.[8]

The words "unless (except) the ship be stranded," have been determined to mean, that if the ship be stranded, the exception in the memorandum is destroyed, and the underwriter becomes liable for a partial loss happening

1 Roux v. Salvador, 3 Bing. n. c. 266.
2 Hagedorn v. Whitmore, 1 Starkie, 157.
3 Davy v. Milford, 15 East, 559.
4 Mar. 169; 2 Arn. 852.
5 Mar. 169; 1 Park, 245.
6 Mar. 169; 1 Park, 219; 2 Arn. 854.
7 Mar. 169; 2 Arn. 854.
8 Mar. 170; 2 Arn. 855.

to any of the articles in the memorandum, *though not from the stranding*, but from some other subsequent cause.[1]

The true meaning of the word "stranding" is, when a vessel, either by an unforeseen accident, not in the ordinary course of the navigation, or by the force of the winds or waves, strikes the ground, or runs aground, *and so remains stationary for some length of time;* but, it is not every touching or striking upon a fixed body in the sea, or in a river, that will constitute a stranding.[2]

Thus, when a vessel, in coming down a river, was forced on shore by the wind, and remained fast for about two hours, until the tide flowed, when she was got off, and proceeded on her voyage, without having received any material damage:—this was held a sufficient stranding.[3] And where a vessel struck upon a rock, and remained fixed there for twelve or twenty minutes, in consequence of which she sustained material injury:—this was held to constitute a stranding.[4] Where, also, a vessel was, by the pilot, but against the advice of the master, fastened at the pier of the dock-basin by a rope to the shore, and left there, and, when she took the ground, and the tide left her, she fell over, by which her cargo (seed) was damaged:—the court held this to be a stranding;—it not being necessary to constitute a stranding that it be the consequence of storms, it being immediately occasioned by sea-water on the strand.[5] And where, in the course of a voyage upon an inland navigation, it became necessary, for the purpose of repairing the navigation, to draw off the water, and, in consequence, the vessel was placed in the most secure situation that could be found; but, when the water was drawn off, the vessel grounded upon some piles not previously known to be there:—this was held to be a stranding, the accident having happened not in the ordinary course of the voyage.[6]

So, also, where a policy was on goods, warranted free from average, unless the ship be stranded,—the vessel, in the course of the voyage, was, by tempestuous weather, forced to take shelter in a harbour, and in entering it, struck upon an anchor, and, on being brought to her mooring, was found leaky, and in danger of sinking, and, on that account, was hauled with warps higher up the harbour, where she took the ground and remained there for half-an-hour:—it was held, that this was a stranding within the meaning of the policy.[7] So, where goods were assured, warranted free from average, unless general, or the ship be stranded,—the vessel was compelled, in the course of her voyage, to put into a tide-harbour, where she was moored alongside a quay, in the usual place for ships of her burden; but it became necessary, in addition to the usual moorings, to fasten her by tacklings to posts on shore, to prevent her falling over when the tide left:—the rope, not being of sufficient strength, broke when the tide left the vessel, and she fell over upon her side, and was thereby stove in and greatly injured:—this was held a stranding within the meaning of that word in the policy, and that the underwriters were liable for a partial loss, though the stranding might have been occasioned remotely by the negligence of the crew in not providing a rope of sufficient strength to fasten the vessel to the shore.[8] And where goods

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1 Burnet *v.* Kensington, 7 T. R. 210.
2 1 Park, 239; Mar. 171; 2 Arn. 866.
3 Harman *v.* Vaux, 3 Camp. 429.
4 Baker *v.* Towry, 1 Stark, 436.
5 Carruthers *v.* Sydebotham, 4 M. and S. 77.
6 Rayner *v.* Godmond, 5 B. and A. 225.
7 Barrow *v.* Bell, 5 B. and A. 736.
8 Bishop *v.* Pentland, 7 B. and C. 219.

were assured to Hull, under the usual warranty of being free from average unless general, or the ship be stranded, and the vessel arrived in the harbour of Hull,—a tide-harbour,—and proceeded to discharge her cargo at the quay on the side of it; but this could be done at high water only, and could not be completed in one tide;—at the first ebb-tide, the vessel grounded on the mud, but, on a subsequent ebb, the rope, by which her head was moored to the opposite side of the harbour, stretched, and the wind blowing from the east at the time, she did not ground entirely on the mud, as it was intended she should do, but her forepart grounded on a bank of stones, rubbish, and sand, near the quay, and the vessel having strained, some damage was sustained by the cargo, but no lasting injury was done to the vessel:—this was held a stranding within the meaning of the word in the policy.[1] And where, on a voyage from Nantes to Dublin, the ship was compelled, from stress of weather, to run into the Bay of Palais, where the gale increased, and the master let go the two bower anchors and chains;—but, in consequence of the large anchor dragging, and for the preservation of the ship, cargo, and crew, and particularly to prevent the ship going on shore, the master slipped the two chains overboard, got the ship under sail, and succeeded in entering the tidal harbour of Sanzon, where, by reason of its being then low water, the ship took the ground;—she was detained there a month, and floated only eight days in the month, and then only at the top of spring-tides:—it was held, that the ship was stranded in the harbour of Sanzon within the meaning of the usual memorandum in the policy of assurance.[2]

But it is not every touching or striking on a fixed body in the sea, or in a river, that will constitute a stranding;—the ship must be *stationary* for some time. As where a vessel, in coming out of port with a pilot on board, struck upon a rock, about the length of a cable and a half from the shore, in consequence of which she fell on her beam-ends, and remained *about a minute and a half*:—though the vessel received some injury, this was not a stranding.[3] Where, also, in her progress up a river-harbour, with a pilot on board, the vessel took the ground for eight hours, and, next day again took the ground, and again, a third time, when about to discharge her cargo, she lay on her broadside two whole tides, and her cargo was damaged:—this was held not a stranding, but what occurred in the ordinary course of navigation in that river-harbour.[4] And where a vessel entered a tide-harbour, and was moored in a place pointed out by the harbour-master, but, taking the ground on the ebbing of the tide, she struck on some hard substance, which made two holes in her bottom, and the cargo was damaged:—this was not a stranding, the vessel having taken the ground merely through the ebbing of the tide, and in the very place where it was intended she should.[5]

If, of the memorandum articles which have been warranted free of particular average, *and enumerated, and valued, and assured separately*, part wholly lost, and the remainder more or less damaged, but subsisting kind, unless utterly useless and valueless, the policy is to be taken everally, and the assured is entitled to recover as for a total loss of the rticles in fact totally lost; and, as to the remainder, which were saved in

[1] Wells *v.* Hopwood, 3 B. and Ad. 20. [2] Concoran *v.* Gurney, 1 E. and B. 456.
[3] M'Dougle *v.* Ro. Ex. Ass. Co., 4 M. and S. 503. [4] Hearne *v.* Edmunds, 1 B. and B. 388.
[5] Kingsford *v.* Marshall, 8 Bing. 458.

kind, however much damaged (if not utterly useless and valueless), it is a partial loss from which the underwriters are exempted by the memorandum.[1]

Thus, where a lump sum was assured on flax, packed in mats, in twenty-four separate packages, and warranted free of particular average, and the vessel having been wrecked, no *entire* package was saved, but part of the flax floated ashore, or was got out of the wreck, wet and loose, to about one-sixth of the whole, the net proceeds of which, when sold, only amounted to two and three-fourths per cent. on the sum assured; there was no abandonment by the assured:—and it was held, that the policy was to be construed severally; and that, as there had been no abandonment, there could not be a total loss of the whole, since one-sixth still existed in specie, though deteriorated, in the hands of the assured, but that he was entitled to recover the value of what was in fact totally lost.[2]

Where, also, in an assurance upon "hogsheads of sugar," warranted free of particular average, the ship grounded near her port of discharge, and all the hogsheads were got on shore with *some* sugar in each, but, in general, not much, and nearly all damaged:—the court held, in conformity with the above case, that though, if any hogshead had been lost, it would have been a total loss as to that hogshead, yet, as each hogshead had some sugar in it, it was impossible to draw the line, and the loss was only an average one, from liability to which the words of the memorandum protected the underwriters.[3]

In like manner, where rice was assured from the port of loading to the port of discharge, and, until there safely discharged and landed, warranted free from particular average:—after the vessel had arrived within the limits of her port of discharge, but before she could be moored or unloaded, she took the ground, filled, and became a wreck; and the rice was greatly damaged, and part of it swelled so much by the water as to burst the barrels; but it was taken out in small craft, and sold for less than the freight:—it was held that the ship, having got within the limits of the port, had, in fact, arrived at her destination, and that, as the rice was saved, however much damaged, it was only an average loss, and, consequently, the underwriters were protected by the memorandum.[4]

Also, where assurance was effected on wheat shipped *in bulk*, and valued at £1600, warranted free from average unless general, or the ship be stranded:—on the voyage, the ship met with tempestuous weather, and made considerable water, and, in pumping it out, wheat, to the value of about £75, was pumped out with it, and lost:—it was held, that, where there is an assurance upon the bulk,—unless the loss exceeds a certain value, there is no average loss, and, in such a case, there cannot be a total loss of a portion only of the cargo.[5] In another case, two policies of assurance were made upon goods generally, from Calcutta to London, under the usual memorandum, "warranted free from average, unless general, or the ship be stranded," and the following declaration of interest was afterwards endorsed on the policies,—"Per *Waban*, 2688 bags of linseed, £1600;" and, "Per *Waban*, linseed, £1600:"—2000 bags of it were shipped on board the *Waban*; and during the voyage, 1023 bags were so damaged

[1] Mar. 173; 1 Park, 254; 2 Arn. 855. [2] Davy *v.* Milford, 15 East, 559.
[3] Hedburgh *v.* Pearson, 7 Taunt. 153. [4] Glennie *v.* London Ass. Co., 2 M. and S. 317.
[5] Hills *v.* London Ass. Co., 5 M. and W. 569.

by perils of the sea, that a large portion of the linseed in them had to be thrown into the sea as rotten and worthless, and the rest was sold for a few shillings only, and, if it had been carried on to London, would not have been linseed: the remaining bags were undamaged, and were safely delivered to the assured:—in an action on the policies, it was held, 1st, that there not being a separate valuation, or otherwise, in the policy, to show that a separate assurance was made upon each portion, as well as a combined assurance upon the whole—the assurance was upon all the seed; and 2d, that though the seed was packed in packages each capable of a distinct valuation, and some of the packages were totally lost, yet, as the rest of the packages arrived safe, and there had been no stranding, and no general average,—the loss was only a partial loss of the assured subject, and the underwriters were protected by the memorandum, and were not liable for a total loss or destruction of part only.[1] And, where the assurance was on goods "in ship or ships," declared by initialed declaration to be "on rice to be declared free from particular average,"—viz., (R.) 500 bags rice, per *Laidmans*, at 8s. 3d. per bag, £206, 5s.;—(R.) 4500 bags rice, per *Margaret Skelly*, at 8s. 3d. per bag, £1856, 5s.;—from each ship, bags had to be jettisoned (thrown overboard) to save the ship; others in the *Margaret Skelly*, were so much damaged by the perils of the sea, that they had to be sold at a port of distress; others in the *Laidmans*, being unfit for use, were thrown into the sea at the port of destination; and there, from each ship, the remainder of the bags of rice were safely landed:—the underwriters settled for the loss of the jettisoned bags; but, as to the others, it was held, that the assured were not entitled to recover the value of the bags sold at the port of distress, or of those thrown into the sea at the port of destination.[2]

Whether a loss be total or partial in its nature, must depend upon the circumstances of each case; but the existence of the goods, or any portion of them, in specie, is neither conclusive, nor, in many cases, a material circumstance in this question. It has been *well* said, by high authority, that "if the goods are of an imperishable nature,—if the assured become possessed of, or can have control over them,—if they still have an opportunity of sending them to their destination,—the mere retardation of their arrival at their original port, may be of no prejudice to them, beyond the expense of reshipment in another vessel; in such a case the loss can be but a partial one, and must be so deemed, even though the assured should, for some real or supposed advantage to themselves, elect to sell the goods where they have been landed, instead of taking measures to transmit them to their original destination. But, if the goods, once damaged by the perils of the sea, and necessarily landed before the termination of the voyage, are, by reason of that damage, in such a state, though the species be not utterly destroyed, that they cannot with safety be reshipped in the same or any other vessel; if it be certain, that, before the termination of the original voyage, the species itself would disappear, and the goods assume a new form, losing all their original character; if, though imperishable, they are in the hands of strangers, not under the control of the assured:—if, by any circumstance over which he has no control, they can never, or within no assignable period, be brought to their original destination;—in any of

[1] Ralli *v.* Jansen, 6 El. and Bl. 422.

[2] Entwisle *v.* Ellis, 2 H. and N. 549.

these cases, the circumstance of their existing in specie at that forced termination of the risk, is of no importance;—the loss is, in its nature, total to him who has no means of recovering his goods, whether his inability arises from the annihilation or from any other insuperable obstacle."[1]

The restriction in the memorandum of the underwriter's liability for losses not amounting to three or five per cent., does not prevent the assured from estimating the loss on the whole cargo, if all his, and if all be memorandum goods, or upon all his memorandum goods, if the loss altogether amounts to upwards of three or five per cent. on the whole; or, from adding several partial losses, individually less than three or five per cent., if, in the aggregate, they amount to more.[2]

As, in an assurance on linen in packages, containing each a number of pieces, and the underwriters agreed, by a special clause, to pay average separately on each particular package; the vessel shipped a quantity of water, by which most of the packages were damaged, though many pieces of linen in each package were uninjured; and the assured, having been desired by the underwriters to act for the best, sold the whole, at a loss of twenty-two per cent. on the whole amount:—it was held, that the clause was introduced for the benefit of the assured, and did not deprive him of his claim to a *general average*, and that, though some entire packages were uninjured, they were still to be included in the average.[3] And, when the memorandum was,—"free from average under three per cent.,"—it was held, that the underwriter was liable for the amount of several partial losses added together, each separately less than three per cent., but amounting, in whole together, to three per cent. or more.[4]

The assured cannot, by giving notice of abandonment, make total a loss which is only partial in its nature. As, where a cargo of sugar and tobacco was assured, and the ship was wrecked, but the sugar and tobacco were brought on shore, in a very damaged state:—it was held, that the underwriters, who were exempted by the memorandum from particular average, could not be made liable, as for a total loss, by notice of abandonment.[5] And, in the assurance of goods,—waste silk, being soft goods,—from Leghorn to Liverpool,—there was the usual memorandum, "*free from average* unless general, or the ship be stranded:"—by stress of weather the vessel had to put into Gibraltar for repairs, and her cargo was necessarily unloaded, when some of the bales of silk were found to be considerably damaged by sea-water, and these were, therefore, sold at Gibraltar by the captain, in the exercise of a reasonable discretion, such as a prudent and unassured owner would have exercised; but the silk might, at a moderate and reasonable expense, have been put in a condition to be brought to London, and delivered as silk, though in a very faulty state:—it was held, that under such an assurance of such goods, no damage, *short of absolute* (*complete*) *destruction of the subject assured*, will amount to a total loss; and that this was not a total loss, and that the assured was not entitled to recover.[6]

It has been said by a very competent authority, in a case just before

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[1] *Per* Lord Abinger, C.B., in Roux *v.* Salvador, 3 Bing. *n. c.* 266.
[2] 1 Park, 256; 2 Arn. 866.
[3] Hagedorn *v.* Whitmore, 4 Stark, 157.
[4] Blacket *v.* Ro. Ex. Ass. Co., 2 Tyrwh. 266.
[5] Thompson *v.* Ro. Ex. Ass. Co., 16 East, 214.
[6] Navone *v.* Haddon, 9 M. G. and S. 30.

referred to :[1]—"The memorandum is in the nature of an exception" (exemption or restriction);—"the policy is general, extending to all losses; the memorandum excepts losses, where each or all, according to the construction to be put upon it, are under three per cent. The rule of construction as to exceptions is, that they are to be taken most strongly against the party for whose benefit they are introduced. The words in which they are expressed are considered as his words, and, if he do not use words clearly to express his meaning, he is the person who ought to be the sufferer. The words here used are ambiguous (have two meanings)—capable of *excluding* every average which is by itself under three per cent.,—or capable of *including* every average, however minute, if the aggregate (collected amount) of different averages come up to that amount. Perhaps usage might explain the ambiguity, and show which of the two alternatives was intended, but there was no evidence of usage. Emerigon (tom. ii. p. 3, 4th ed., Paris, 1827) speaks of averages in the plural, as if it was sufficient that the aggregate amounted to three per cent.; but he does not appear to us to speak upon the subject in such a manner as to justify a conclusion, either way, upon the point in question, and we are not aware of any other writer of authority that has. In the absence, therefore, of usage and authority, it seems to us that we ought to rest upon the rule of construction we have mentioned, and, according to that rule, *the underwriters are responsible, if the aggregate of different damages comes up to three per cent.*"

And Lord Abinger said, in a case also before cited :[2]—"The law has been settled in many cases before, that, *where the assurance is upon each package separately, it (the loss of a package) is to be treated as a total loss upon each package lost; but, when it is an assurance upon the* BULK, *unless the loss exceed a certain value upon the particular article, there is no average loss, and there cannot, in such a case, be any total loss of a portion only of the cargo.*"

III.—THE DURATION OF THE RISKS.

The commencement and termination of the risk depend upon the words of the policy; and, as every voyage must have a place from which it commences, and another place at which it is intended to end, the commencement and termination of the voyage, when the assurance is for the voyage, are indispensable requisites of the policy.[3] And, when the assurance is for a specified period of time, the two extremes, the beginning and the ending of that time, are held to be the commencement and the termination of the risk assured, and these must, therefore, be distinctly stated; and, when the assurance is for one premium, both outward and homeward, this is held only one entire voyage, having the commencement and termination at the same place.[4]

In order to make the underwriters liable, the loss, therefore, must have happened during the course of the voyage, or the running of the time assured, and during the continuance of the risk assured against. It will be necessary, then, to consider the duration of the risk—1. On the goods; 2. On the ship; 3. On the freight, and how and when the risk may be altered.

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1 *Per* Lord Lyndhurst, C.B., in Blacket, *ut sup.*, 2 Tyrwh. 274.
2 *Per* Lord Abinger, C.B., in Hills *v.* Lond. Ass. Co., 5 M. and W. 576.
3 Mar. 191; 1 Park, 22.
4 Mar. 191.

1.—*On the Goods.*

The usual terms of the policy on goods are—"Beginning the adventure upon the said goods and merchandises, from the loading thereof aboard the said ship until the said ship, with the goods, shall be arrived at ——, and until the same be discharged and safely landed." And, under a policy so expressed, the general rule is, that the risk does not commence until the goods be actually on board, and that it attaches to such goods only as are shipped at the particular place mentioned, and not to goods that have been previously shipped, though these be the identical goods assured, and were on board the ship at that place, nor to goods that have been loaded, nor to goods that are ready to be, but have not been, shipped.[1]

Thus, in an assurance on ship and goods "at and from the coast of Brazil, until arrived at Simon's Bay or Table Bay; and upon the ship and goods, until the goods be there discharged;" but the goods had been previously loaded at the Cape of Good Hope, and carried to the coast of Brazil, where the vessel was seized on suspicion of illicit trading with the enemy, and carried again to the Cape, with the original cargo on board:—it was held, that the risk could only commence after a loading of goods had taken place on the coast of Brazil, and that the goods assured, having been previously loaded at the Cape of Good Hope, the policy never attached on the ship or the goods.[2] So, where goods were assured "at and from Gottenburg to the ship's port of discharge in the Baltic," beginning the adventure on the goods from the loading thereof on board said ship, without saying where;—the goods assured were loaded at London, and the vessel sailed to Gottenburg, and, without loading or unloading any of her cargo there, she sailed on her voyage, and was captured:—the court held, that it must be determined, from the words of the policy, that the goods were loaded at Gottenburg, and that not being the case, the policy never attached.[3] And, though the underwriter knew that the goods had been loaded at London, and were intended to continue on board during the whole voyage,—it has been held, that this would make no difference, as the construction of a written contract cannot be made to depend upon the knowledge the party might happen to possess of the facts.[4] And, where a ship was bound on a bartering expedition, and an assurance was effected on goods at and from the coast of Africa, to the ship's port of discharge in the United Kingdom—"beginning the adventure from the loading thereof on board the said ship, twenty-four hours after her arrival on the coast of Africa;" and a loss having taken place when a portion of the goods of the outward voyage was on board, and a considerable portion of the homeward cargo not shipped at the time:—it was held, that the policy did not cover that portion of the goods of the outward voyage on board at the time of the loss.[5]

If, however, the underwriter has the means of knowing, from the words of reference employed, or from the words used in the policy, or from the circumstances of the case, that the goods have been loaded previous to the ship's arrival at the port, at and from which assurance is made, and that

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[1] Mar. 191; 1 Arn. 418.
[2] Robertson *v.* French, 4 East, 130.
[3] Spitta *v.* Woodman, 16 East, 188.
[4] Langhorne *v.* Hardy, 4 Taunt. 630.
[5] Rickman *v.* Carstairs, 5 B. and Ad. 651.

that port is not the port of loading,—in such case the policy attaches.[1] As, where goods were assured, at and from Gottenburg to the Baltic, and the assurance was declared to be in continuation of five former policies from Norfolk, in Virginia, which was the real port of loading :—it was held, that the words of reference to the former policies, had the same effect as if these terms had been repeated in the new one, and completely removed the objection.[2] And, where sugars were assured at and from Landscrona to Wolgast, from loading thereof on "board said ship," and the underwriters were informed that the sugars had been shipped at Gottenburg, on board the same vessel, some months before : part of the cargo was taken out of the ship's hold, and landed on the quay, and replaced in the ship ; a sufficient quantity was taken out to enable the custom-house officers at Landscrona to inspect and examine the whole cargo on board, the duties on which were paid :—it was held, that, as at Landscrona there had been an actual unloading and reloading of part, and a virtual reloading of the whole, as far as necessary for ascertaining and paying the duties, this was sufficient to supply a date, so as to satisfy the words of the policy, and to distinguish that case from the above case of Spitta *v.* Woodman.[3]

But, if the words used in the policy be—"beginning the adventure upon the said goods from the loading thereof on board said ship *wheresoever*,"—this word "wheresoever" will be held a word of the largest extent as to the loading. As, where goods were assured "at and from Pernambuco to Maranham, and at and from thence to Liverpool, beginning the adventure on the goods from the loading thereof on board the ship wheresoever:"—it was held, that the policy covered goods previously loaded at Liverpool, and which arrived at Pernambuco, but were not unloaded there, and afterwards sustained a partial loss by wreck on the voyage from Pernambuco to Maranham.[4]

Under the words, until the goods are "discharged and safely landed" at the port of delivery,—the risk upon these goods continues so long as they are on board the ship, or in boats, according to the practice of the port or place, for the purpose of being landed.[5] Thus, where it is the usage in a particular trade to take the goods on shore in public lighters, the assurers were held liable for an accident which happened to the goods, in their passage to the shore on board a lighter.[6] And, where a cargo of British goods was assured from Nassau to Campeachy, and it appeared, that, on the ship's arrival off that port, she made signals, as usual in that contraband trade, for launches to come off, into which the goods were put for the purpose of *being run* on shore, but, in the attempt, they were seized by the vessels of the Spanish Government :—it was held, that they were protected while in the launches.[7] And, where the goods assured were destined to a particular place in a West Indian island, and, in such cases, it is the usual course of the trade for the ship to proceed to an adjoining port, and there tranship the goods on board shallops :—the goods are protected under the policy, though the underwriters should not have been informed of this usage of trade.[8]

But, though it may be the practice of a particular place or trade to

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[1] 1 Arn, 420.
[2] Bell *v.* Hobson, 3 Camp. 273.
[3] Noneen *v.* Kettlewell, 16 East, 176.
[4] Gladstone *v.* Clay, 1 M. and S. 418.
[5] 1 Park, 32 ; Mar. 197 ; 1 Arn. 429.
[6] Hurry *v.* Ro. Ex. Ass. Co., 3 Esp. 289.
[7] Matthie *v.* Potts, 3 B. and P. 23.
[8] Stewart *v.* Bell, 5 B. and A. 238.

land goods in lighters, these are understood to be public licensed lighters, or the ship's boats; and, therefore, if the consignee sends his own hired lighters, on board of which the goods are put (unless where it is the practice of the trade so to convey them on shore),—or, if he takes charge of them from the lighterman, this is a delivery to him sufficient to discharge the underwriters.[1]

When the ship is disabled in the course of the voyage, or otherwise unable to proceed to her port of destination, and it becomes necessary to tranship the goods on board another vessel,—in such a case, in which the captain would be justified in transhipping,—the risk still continues, and the underwriters are liable for a loss happening after such transhipment.[2] And, when an assurance was made on goods, at and from the port of loading to an intermediate port in the voyage, and from that port to the port of delivery; but, on arrival at the intermediate port, no vessel was there to carry on the goods to the port of delivery, and, in consequence, the goods were unloaded and put into a storeship, there considered as a warehouse:—the risk continued on the goods while on board the storeship.[3] Likewise, where goods were assured on board the English ship *Penang*, from Liverpool for various ports in China,—the policy on which gave the most extensive liberties to the *Penang*, on arrival in the Chinese seas, to tranship the cargo on board any other vessel, to visit any ports, in any order, and to remain there, till deemed expedient to proceed to her port or ports of discharge,—the risk continuing "*until the goods should be arrived at their final port of destination:*"—the ship arrived in Macao Roads, and the consignees there—finding it would be dangerous to send the goods up the river to Canton, owing to the then state of relations between this country and China, and also that, owing to sea damage sustained on the voyage, it would be necessary to tranship them—hired the *James Laing* as a *temporary receiving-ship*, and sent her with the *Penang* to Hong-Kong,—the safest anchorage in these seas, but where there was then no market whatever,—there to receive the cargo from the *Penang*, and to keep it on board till it could be either warehoused there or sent on to Canton or some other market in China:—while the cargo was thus in the course of transhipment in Hong-Kong Roads, a violent typhoon came on, in which the *James Laing*, and all the goods up to that time transhipped into her, were sunk and totally lost:—in an action on the policy to recover this loss, it was held, that Hong-Kong was not the final port of destination in the contemplation of the parties, and that the risk of the goods in the *James Laing* was a continuing risk, under the policy, at the time of the loss, and that, therefore, the assured was entitled to recover.[4]

If the goods are once landed at the port of discharge, in the usual course of trade, but are afterwards confiscated by the Government there, without the consignees having any control over them, or seen them,—there being no evidence of seizure before the goods were discharged, and the goods having been landed in the usual course of trade,—the underwriters are discharged.[5] And an assurance on goods, in the usual form, to the East Indies, until arrived at the last place of discharge on the outward voyage, ceases when the outward cargo is discharged, and will not protect some of the

[1] Strong *v.* Natally, 1 B and P *n. r.* 16. [2] Mar 196; 2 Park, 618; 1 Arn. 179.
[3] Tierney *v.* Etherington, 1 Burr. 348. [4] Oliverson *v.* Brightman, 8 Ad. and El. 781.
[5] Brown *v.* Carstairs, 3 Camp. 161.

goods that have been re-shipped, in a voyage to another market, before the ship's return to Europe.[1]

So also, in a policy on goods, the continuance of the risk was stated to be, from the loading on board the ship, including risk of craft, and to endure until discharged and safely landed; and a memorandum on the margin gave liberty "to load, reload, exchange, sell, or barter, all or either, goods or property, on the coast of Africa and African islands, and with any vessels, boats, factories, canoes," &c. :—part of the ship's cargo was landed in a factory on the coast of Africa for bartering, and the ship was lying at anchor, loading native produce from the factory, when the factory and all it contained were destroyed by fire :—it was held, that the assurance only comprehended sea risks, and did not cover either that part of the ship's cargo that had been landed in the factory, or the native produce still on shore, intended to be her cargo, whether that had been acquired by barter or otherwise.[2] Also, an assurance was made "*on profit*" on a cargo of timber to be loaded at Quebec, "beginning the adventure upon the said goods and merchandises from the loading on board the said ship," and the voyage was inserted as from "New York to Quebec, during her stay there for any purpose, and back to Liverpool :"—the cargo was waiting the ship's arrival at Quebec, and, while the ship was proceeding from New York to Quebec, she was lost by the perils of the sea, and the cargo could not be shipped during the shipping season :—it was held, that the cargo, from which the profits were expected to be realised, never having been on board, the assurance never attached.[3]

2.—*On the Ship.*

The usual terms of the policy of assurance on the ship, are, generally, "at and from" the port of loading; or, if the vessel is expected to arrive at a port abroad, "from her arrival there;"—though the commencement of the risk varies according to the purpose of the parties.[4]

It is required, however, to give good commencement of the risk, that the ship must once have been at the place where the risk is to begin, in good safety, otherwise the policy does not attach. So, a vessel assured "at and from St. Michael's to England," arrived at St. Michael's in so leaky a state, owing to bad weather, that she was quite unfit to take in her cargo, and, after lying twenty-four hours in great danger from the weather,—there being no harbour,—she was blown out to sea, and wrecked :—it was held, that the vessel should once have been at St. Michael's *in good safety*, and in such condition as would have enabled her to lie in reasonable security, until properly repaired and fitted for the voyage, but, having arrived a mere wreck, the policy never attached.[5] But, if the vessel arrives at the port where the risk is to commence, in such a state as to enable her to lie in reasonable security, until properly repaired and fitted for the voyage,—the risk attaches as long as she is so repairing. Thus, a ship was assured on 15th May, "at and from Pillau to London;" she had arrived at Pillau on 13th May, and remained there a considerable time, to complete her repairs, before she commenced the voyage: she com-

[1] Richardson *v.* Lond. Ass. Co., 4 Camp. 93.
[2] Harrison *v.* Ellis, 7 El. and Bl. 485.
[3] Hallhead *v.* Younge, 6 El. and Bl. 312.
[4] Mar. 203; 1 Arn. 442.
[5] Parmeter *v.* Cousins, 2 Camp. 234.

menced to take in her cargo on 1st July, but, the water being unusually low, she could not get over the bar, and was unable to sail until November, when the loss happened:—it was held, that a policy *at and from* a place attached on the ship while under repair, it not being necessary that she should have been seaworthy when the policy was effected; that here the ship was ready to sail, but, an unusual want of water detained her; and, therefore, that this was not an unusual delay, amounting to a deviation, nor such as would discharge the underwriters.[1]

If, however, the delay be unreasonable and unaccounted for, the underwriters will be discharged. As where, on 28th January, a vessel was assured, afloat, at and from Bristol to London, and the vessel was not fitted out for sailing till May following, and only sailed on 17th May:—it was held, that this delay, unaccounted for, was unreasonable, and discharged the underwriters; and the circumstance of her being a yacht, which did not sail in winter, was no justification of such delay.[2] And it has been held by very high authority, "that though a ship be assured *at and from* a certain port, it is assured with a view to the probable continuance of the vessel *at* that port and the voyage on which she is assured; for, according to the voyage, the delay and continuance may differ."[3] And another eminent judge has said, "It is clear assurance law, that, on a policy at and from a port, a vessel ought to be ready to sail as soon as she reasonably can, and is not to lie in port for months before she takes her departure.[4]

The safety, which is required to give a good commencement to the risk, is a *physical safety* from the perils assured against, and not from *political* restraints. But where the assurance was on the chance of the vessel's loading a cargo at Riga, and, if prevented from doing so by an act of the Russian Government, the assured was to receive a total loss; and, when the vessel arrived at Riga, her papers were sent to Petersburgh to be examined under a general order of the Russian Government, and afterwards the ship and cargo were put under sequestration, and condemned and sold, before the outward cargo was discharged:—it was held, that it was the act of the Russian Government which prevented the unloading of her outward cargo, and thereby effectually prevented her from loading her homeward cargo; and that the policy on the vessel, *at and from* Riga, attached, notwithstanding the state of restraint in which the ship remained from her arrival to her condemnation.[5]

When the assurance is *at and from* a place, island, or district of coast, the risk continues at that *place*, as long as the ship is preparing for the voyage assured, and protects her whilst going from one port to another in the same *island or district*. As an assurance "at and from Jamaica," was held to protect the ship in going from one port of that island to another.[6] And the freight of a ship, from London to Grenada, was assured "at and from Grenada to London;" and the ship arrived safe at Grenada (where there was only one custom-house for the whole island), and discharged part of her outward cargo at three different bays, and was proceeding to a fourth,

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[1] Smith *v.* Surridge, 4 Esp. 25.
[2] Palmer *v.* Fenning, 9 Bing. 460; Palmer *v.* Marshall, 8 Bing. 317.
[3] *Per* Lord Chancellor, in Tasker *v.* Cunningham, 1 Bligh, 100.
[4] *Per* Parke, J., in Palmer *v.* Fenning, *ante*. [5] Bell *v.* Bell, 2 Camp. 475.
[6] Cruikshanks *v.* Jansen, 2 Taunt. 301.

to discharge the residue, and take in part of her homeward cargo, when she was lost by a peril of the sea:—it was held, that the ship, at the time of the loss, was proceeding to this fourth bay for a purpose connected with the voyage assured, and, consequently, that it was no deviation, and that the underwriters were liable.[1] But where the assurance on a ship is "at and from her port of loading in North America to Liverpool," and she took in part of her cargo at Cockayne, in New Brunswick, and then sailed from thence to Bucktouch, seven miles distant, in the same province, and on the same bay, where she completed her cargo, and then returned to Cockayne;—Bucktouch was not in the way to Liverpool, but both ports were situated in creeks in the same bay, and were spoken off by several persons as ports, though neither had a custom-house, and had only customs officers under the jurisdiction of the custom-house at St. John:—it was held, that, after the ship had begun to load at Cockayne, that was her port of loading; that the policy did not allow of her afterwards going to Bucktouch, which was not on her way to Liverpool, and that her doing so was a deviation.[2]

Under an assurance "from," the risk does not commence until the vessel actually break ground to sail on the intended voyage; but under an assurance "at and from," or "from her arrival,"—the risk commences from the time the policy is subscribed, if the vessel has arrived, or, if not, from the time of her arrival at the place specified;[3] and under an assurance "at and from,"—an open bay or roadstead, being the usual place of loading and unloading, is held a port within the meaning of the policy.[4]

The assurance on the ship is usually *to* her port of discharge, or *to* a port or place on a certain sea, coast, or river; and, in that case, the port which the captain selects for the purpose of discharging, is to be held the ship's port of discharge, so as to relieve the underwriters on her arrival at it.

As, where a ship was assured from London to any port or ports on the River Plate until her arrival at her last port of discharge in that river;—the captain's intention was, to go to Buenos Ayres; but, hearing on his arrival in that river, that that place was in the enemy's hands, he put into Monte Video, then in possession of the British, where the ship was moored in safety, and part of her cargo discharged; but, before the whole was landed, a vessel ran foul of her, and did considerable injury;—till then, the captain had not abandoned his original intention of going to Buenos Ayres; but after the accident, he landed the whole of the cargo, the ship was sold, and an average loss of twenty-four per cent. and upwards incurred:—it was held, that the voyage ended at Monte Video, and that as the vessel had entered that port, and could not legally have gone to Buenos Ayres, the voyage, unless it ended at Monte Video, could have had no termination until peace was restored.[5] So, also, an assurance was from London to any port or ports in the Baltic, backwards and forwards, &c.,—warranted free of capture in the ship's port of discharge; the ship arrived and anchored in Pillau Roads, about two miles farther out than ships usually lie for the purpose of unloading; the captain went on shore to make his report, and

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[1] Warre *v.* Millar, 4 B. and C. 538.
[2] Brown *v.* Tayleur, 4 Ad. and E. 241.
[3] Mar. 206; 1 Arn. 442, 445.
[4] Cockey *v.* Aitkenson, 2 B. and A. 460; Gavin *v.* Sea Ins. Co., 4 Bligh, *n. s.* 578.
[5] Brown *v.* Vigne, 12 East, 283.

obtain permission to discharge his cargo, and returned with Prussian soldiers and a pilot, who discharged part of the cargo into a lighter, and then carried the ship into the inner harbour, where the goods were finally confiscated:—it was held, that this was an arrival in the captain's *elected* port of discharge, so as to discharge the underwriters.[1] And, when the assurance was on goods and freight to Monte Video and Buenos Ayres, if open, or the ship's final port of discharge in the River Plate, with liberty to wait two months at Monte Video, if needful; the vessel arrived on 2d August at Monte Video, which was then blockaded by an enemy's fleet, to prevent vessels passing to Buenos Ayres; the blockade did not cease till 4th October, and the vessel afterwards sailed to Buenos Ayres, and was lost:—it was held, that the risk was at an end, as soon as the vessel had stayed two months at Monte Video, and that the underwriters were, therefore, no longer liable.[2]

The risk is usually made to continue until the vessel "has been moored twenty-four hours in *good safety*;" and, therefore, if a loss happen after that time, the underwriters are discharged, though that loss may have been in consequence of something that had happened during the voyage.[3] But, if the vessel arrive at her port of destination a mere wreck, having received her death-wound at sea, she cannot be said to have been moored twenty-four hours "in safety," and the underwriters will be liable, though the ultimate loss happened after that time. As, where a ship is assured from Liverpool to the coast of Africa, and from thence to her final port of destination in the West Indies; but, in the course of her voyage to the West Indies, in calm weather, and in deep water, she received a violent concussion, described as resembling the shock of an earthquake, from which she received so much damage, that it was with the greatest difficulty she was kept afloat by pumping until she reached her port of destination, almost a wreck, when she was lashed to a hulk about fifty yards from the shore, to keep her from sinking, and, in attempting to remove her to the shore, a few days after, she sunk:—in an action for a total loss, the underwriters were held liable.[4]

When the policy is "until moored twenty-four hours in good safety," the underwriters continue liable until the vessel has been, during that time, in good physical safety, in her place of ultimate destination, at her port of discharge, in the fullest sense of the words. Thus, where a vessel was assured from Sierra Leone to London, and the assurance was to endure until she had been moored in good safety twenty-four hours; the vessel arrived on the evening of 18th February,—and the captain, having orders to take her into the king's docks at Deptford, moored her near the dock-gates; on the following morning, he was informed at the dock, that no order had been received for his admittance,—but that, if it had, he could not be then admitted, on account of the quantity of ice in the river; the order was sent by the Navy Board on the 21st; but, on account of the ice, the vessel could not be moored until the 27th; and then, in warping her toward the dock, a rope broke, she grounded, and was totally lost:—it was held, that the assured was entitled to recover, for that the place where the vessel was moored, not being the place of her ultimate destination, the

[1] Dalgleish *v.* Brooke, 15 East, 295.
[2] Doyle *v.* Powell, 4 B. and Ad. 267.
[3] Mar. 210.
[4] Shawe *v.* Felton, 2 East, 108.

policy did not expire when she had been there twenty-four hours; and as the vessel remained at these moorings on account of the ice, and not waiting for the order, the underwriters were not discharged by the delay.[1] But, in another case, a ship assured by a *time* policy that expired on 23d September, took the ground, when attempting, on the 16th September, to enter the harbour of Santa Cruz, and remained fast on the rocky bottom till the tide rose, when she was got off, and taken into the harbour, and she remained there with her crew on board, and was kept afloat by pumping, till the middle of October, and her cargo was discharged into other vessels, when she was beached and surveyed, and was found to be so much damaged by the accident, that the necessary repairs could not be done at Santa Cruz, —no dock, materials, or workmen being there, and she could not be prudently taken to Monte Video,—the nearest port; and, therefore, the captain sold her at Santa Cruz, for the benefit of all concerned:—in an action against the assurers, it was held, that there was actually a *partial loss* within the assured time, though the nature and extent of that loss were not ascertained till after the expiration of that time, and that the assurers were not freed from their liability to pay the partial loss arising from the injury of 16th September, which was suffered during the risk.[2]

3.—*On the Freight.*

The general rule is, that the risk on an assurance upon freight, commences from the time the goods are put on board, and the ship is ready to sail; but, although this is the general rule, it is not necessary to entitle the assured to recover, that, in every case, the whole goods should be on board, provided there has been a contract for the shipment of the goods, and the vessel in a condition to receive them, and the goods were ready to be put on board, or the ship be in prosecution of her voyage to the port of loading, though no goods be on board.[3]

Thus, where a vessel took out goods to St. Domingo to barter, and, when part of the cargo had been bartered, and, when the goods bartered for were on board, and the rest of the outward cargo remained on board, and which would have been, most probably, also exchanged, the vessel was wrecked: it was held, that the assured was not entitled to recover more than the freight of the goods which were exchanged, and which were actually on board, and that, whether the policy was an open or a valued one.[4]

But where a ship, under a charter-party, was in good safety at her port of loading, and in a condition to take in her homeward cargo, which was ready for her, but she was lost in a hurricane before any of the goods were put on board: it was held, that the policy on the freight attached.[5] And, although the general rule is, that the risk on freight does not attach, until either the goods are shipped on board, or until there is an actual contract for shipping them, yet a shipowner, assuring his freight, is entitled, in the event of a loss, to recover from the underwriters the value of the benefit which he, the shipowner, would have derived, if there had been no loss, by carrying his own goods on the voyage assured.[6]. So, an assurance was on

1 Samuel *v.* Ro. Ex. Ass. Co., 8 B. and C. 119.
2 Knight *v.* Faith, 15 Ad. and El. *n. s.* 649. 3 Mar. 218; 1 Park, 55; 1 Arn. 470.
4 Forbes *v.* Cowie, 1 Camp. 520; Forbes *v.* Aspinall, 13 East, 323.
5 Williamson *v.* Innes, 8 Bing. 81 *n.* 6 Flint *v.* Flyming, 1 B. and Ad. 45.

freight, "at and from Calcutta, or any port or place on the Coromandel Coast, to any port or place at Bourbon:"—the ship put into a port on the Coromandel Coast for repairs, and a full cargo was purchased, and ready to be sent on board, at a place about seven miles distant from the port; but, the ship was lost by an accident in going out of dock,—the policy covering perils of the seas, and all other perils, losses, and misfortunes: it was held, that the owner's interest in the profit of conveying the cargo was properly described as freight; that the cargo being ready when the ship was about to leave the dock, the risk attached; and that the loss was a loss within the terms of the policy.[1] And where a ship was chartered from Liverpool to Jamaica, there to take on board a full cargo for Liverpool, at the current rate of freight, payable one month from the discharge of her cargo at Liverpool, and an assurance was made on her homeward freight:—the cargo being lost at Jamaica, when she had taken in a part of the homeward cargo, and the rest being ready to be shipped,—it was held, that the assured on freight was entitled to recover.[2]

Freight may be assured by a *time* policy, though it cannot be *earned* till *after* the time for which it is assured; and, when the cargo has not been totally lost, but has suffered sea damage,—in a question, whether there has been a total loss of freight,—the amount of the expense, at which the cargo can be restored, so as to be carried to its place of destination,—is an essential inquiry,—because, if this expense would exceed the value of his freight, the shipowner is not bound to be at that expense before the assurer can be made liable for the loss of freight.[3] And, where freight (valued at £4000) was assured from Valparaiso to England; and the ship having sailed with a full cargo of 800 tons, was compelled by stress of weather to put back to Valparaiso; and, it was found upon survey, that to repair the ship so as to bring home the entire cargo, would be more than the value of the freight, though less than the value of the ship when repaired; and therefore the captain sold her:—it was held, that this was not a total loss of freight.[4]

When a ship had received, during her voyage, considerable injuries from perils of the sea, and further injuries on her arrival at the port of destination; but her cargo (timber) was safely delivered to the consignees, who paid the owners the amount of the freight;—and then the owners abandoned the ship as a total loss *to the assurers on the ship*, who were subsequently found entitled to the freight the owners had previously received;—the owners then brought an action against the *assurers on freight* for the amount of the freight assured:—but it was held, that the owners were not entitled to recover against the assurers on freight; because, *the freight* having been earned and actually received, the contract of the assurers on the freight was at an end, and though it was, by their own act, lost to the owners, it was not lost by the perils of the sea assured against.[5] And if the ship, in which the assured goods are, be so much injured by a peril of the sea during the voyage, as to be obliged to put into a port and land her cargo, and part of it is found to have been so much wetted by sea-water, that it could not be reshipped, without danger of its taking fire,

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[1] De Vaux *v.* Jansen, 3 Bing. *n. c.* 519.
[2] Davidson *v.* Willasey, 1 M. and S. 313.
[3] Michael *v.* Gillespy, 2 Scott, *n. s.* 62.
[4] Moss *v.* Smith, 9 M. G. S. 94.
[5] Scottish Marine Ins. Co. *v.* Turner, 1 Jur. 631; 1 Macqueen's H. of L. Cases, 33, &c.

unless it had gone through a process that would have taken six weeks, and been done at an expense equal to the freight; and, therefore, the captain sold these goods, and, not finding others to fill their place, he sailed on his voyage, and arrived with the rest of his cargo:—it was held, that the assurers on freight were not liable for the loss of the freight of these goods.[1]

[1] Mordy *v.* Jones, 4 B. and C. 394.

X.—OF LOSS.

Every loss by the perils assured against, is either *total*, involving the loss of the whole subject assured; or *partial*, which is a loss falling upon part only of the particular subject assured.

A *total* loss is either *actual* or *constructive*. An actual total loss is, when the subject assured, whether ship, goods, or freight, is no longer in existence. A *constructive* total loss is, where the subject assured, though not wholly lost, is, in fact, lost to the owner, in so far as he can derive no benefit from it.[1]

In the case of an *actual* total loss, where, by a peril of the sea, the subject-matter assured, whether ship or goods, has lost its form and species, there is no necessity for a formal abandonment to the underwriters;[2] but, where an abandonment has been made on a supposed total loss, the supposed state of the facts must continue up to the time of a settlement with the underwriters, or of an action being brought,—for, if it turn out, before either of these takes place, that no such state of facts did exist, or that the ship and cargo are in safety,—it will only be a partial loss.[3]

A *constructive* total loss is, where, though the subject assured be not wholly destroyed or annihilated, yet, by some of the perils assured against, the ship is rendered unnavigable without any reasonable hope of repair, or the goods are so damaged as not to be worth the expense of bringing them to their destination.[4]

A *partial* loss, sometimes called *particular average*, is any loss which falls on the ship, or the cargo, or the freight alone, and which cannot be held as a total loss, or a loss for the benefit of the whole concern.[5]

It cannot be a *total* loss on the *ship*, unless the vessel has lost all her character of a ship, or unless there are no means within the captain's reach, by which it can be treated, so as to retain that character;[6] or, unless the vessel can be repaired only at an expense exceeding her value when repaired.[7] But, while the ship continues in existence, *as a ship*, and can be repaired at a reasonable expense;[8] or, though the crew, completely exhausted, may have deserted her for the preservation of their lives, in a damaged and leaky state on the high seas, but the vessel is subsequently brought into harbour;[9]—in such cases, there is not a total loss, and these are only partial losses. The loss of the voyage will not make a constructive total loss of the ship.[10]

On the *goods* there cannot be a *total* loss, though the voyage be delayed, if the goods, *not being of a perishable nature*, as copper and iron, or flour, do not suffer by the delay, and there be reasonable expectation of forwarding them by the same, or a substituted vessel, to the port of destination.[11] But, if the goods assured are of a perishable nature, and have

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[1] 1 Park, 215; Mar. 373; 2 Arn. 990.
[2] Cambridge *v.* Anderton, 2 B. and C. 691; Roux *v.* Salvador, 3 Bing. *n. c.* 278; Irving *v.* Manning, 1 H. of L. Cases, 287.
[3] Bainbridge *v.* Neilson, 10 East, 320; Brotherton *v.* Barber, 5 M. and S. 418.
[4] 1 Park, 374; 2 Arn. 1052.
[5] Mar. 374; 1 Park, 218; 2 Arn. 953.
[6] Gardner *v.* Salvador, 1 M. and R. 116.
[7] Allan *v.* Sugrue, 8 B. and C. 561.
[8] Doyle *v.* Dallas, 1 M. and R. 48.
[9] Thorneley *v.* Hebson, 2 B. and A. 513.
[10] Everth *v.* Smith, 2 M. and S. 278.
[11] Anderson *v.* Wallis, 2 M. and S. 240; Hunt *v.* Ro. Ex. Ass. Co., 5 M. and S. 47.

been so much damaged by sea-water that they would not be worth anything, though forwarded to their place of destination, it is a total loss.[1]

And on the *freight*, a mere retardation of the particular voyage assured is no ground of loss, if the vessel actually earn the freight, as it makes no difference whether the vessel earn the freight on the particular voyage, or a posterior one, for the goods on board; or, if the freight be earned on the same voyage, though the expense occasioned by the delay be more than the freight.[2]

The underwriters are liable for a loss, the immediate cause of which is one of the enumerated risks, though the remote cause may be traced to the negligence of the master and mariners.[3]

I.—LOSS BY PERILS OF THE SEA.

Under losses by perils of the sea are included such losses and misfortunes as arise from the immediate act of God, without the intervention of human agency,—as, from stress of weather, storms and tempests, thunder and lightning, the violence of the wind and waves, rocks and sands, and any other violence which human prudence could not foresee, nor human strength resist.[4]

When a vessel founders at sea, it often happens that no evidence of the vessel having so foundered can be obtained; and, therefore, where the vessel has sailed on the voyage assured, and has not been heard of within a reasonable time thereafter, or where vessels which sailed after her have arrived at the same port of destination without any accounts of her,—the vessel will be held a missing ship, and presumed to have foundered at sea, so as to entitle the assured to recover.[5]

As in a policy of assurance on goods by a certain ship, it was proved that she sailed on the voyage assured, with the goods on board, and had never arrived at her port of destination,—and that, a few days after her departure, a report was heard in the place whence she sailed, that the ship had foundered at sea, but that the crew were saved:—it was held, that this was sufficient *primâ facie* evidence of a loss by the perils of the sea, and that the assured was not bound to call any of the crew, or to show that he was unable to procure their attendance;[6] nor is it necessary to call witnesses from the port of destination to prove that she had not arrived there.[7]

There is no time fixed by law in this country, on the *expiry* of which a missing ship shall be presumed to have foundered at sea; but a *reasonable* time must elapse before the assured can call upon the underwriters for a loss from this cause; though what is held to be a reasonable time must depend upon the particular circumstances of each case.[8]

If, by any of the perils assured against, the ship ceases to retain her character of a ship, and becomes a wreck, that is a total loss by the perils of the sea;[9] and a vessel is held to be totally lost within the meaning of the policy, when it becomes, *as a ship*, of no use or value to the owner, and is as much lost as if it had gone to the bottom, or had been broken

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1 Parry *v.* Aberdein, 9 B. and C. 411; Roux *v.* Salvador, *ut supra.*
2 Everth *v.* Smith, *ut supra.*
3 Walker *v.* Maitland, 5 B. and A. 170.
4 Mar. 386; 1 Park. 136; 2 Arn. 1273.
5 Mar. 387; 2 Arn. 793.
6 Koster *v.* Reid, 6 B. and C. 19.
7 Twemlow *v.* Oswin, 2 Camp. 85.
8 Mar. 388; 1 Park, 147; 2 Arn. 794.
9 Cambridge *v.* Anderton, 2 B. and C. 691.

to pieces, and its fragments had come to land; and a loss is to be considered as total, when a prudent and unassured owner would not have repaired.[1] When the subject-matter assured has, by a peril of the sea, lost its form and species,—where a ship, for example, has become a mere wreck, or a mere congeries (a mass or heap) of planks, and has been fairly and honestly sold in that state for a sum of money,—the assured may recover for a total loss without any abandonment.[2]

Where another vessel runs down the vessel assured, by gross negligence of the persons on board the other,—this is a loss by perils of the sea, though there is also some negligence on the part of the vessel assured.[3] And where an assurance on a ship was, "at and from any port or ports, place or places, in port, at sea, in the Government service, for twelve months," —the vessel, in the course of that service, was ordered into the harbour of Boulogne, which is a dry harbour, with a hard uneven bottom, where, under the direction of the superintendent of transports, she was moored near one of the quays; between nine and ten at night, the tide having then left the vessel, a cracking noise was heard in the ship, as if from something breaking; and, on the return of the tide, there was a considerable swell in the harbour, and the ship struck the ground several times; and in the morning, several of her knees were found to be broken:—this was held a loss by perils of the sea.[4] So an assurance was at and from Quebec to Teneriffe, of a cargo of wheat, fish, and staves, with the usual memorandum as to corn and fish, free from average unless general:—the ship was captured, and afterwards recaptured, and sent by the recaptors to a port, where a scarcity prevailing, an embargo was laid on the exportation of provisions; and the ship's cargo having been landed,—583 bushels of the wheat were found so damaged by sea-water, that, by order of the magistrates, and for the sake of the public health, they were thrown overboard,—and the other part of the wheat being damaged, the captain sold that part, and also the fish, which were sold at a profit; he also put up the ship for sale, which he purchased at not more than one-fourth of her value, for the benefit of the owners, and having repaired her, and being refused permission to ship the remaining wheat to Teneriffe, he directed it to be sold, and purchased it for the benefit of those concerned, and, by leave of the Government, shipped the same for Madeira, where he arrived and delivered it, and took in a cargo of wine for London, with which he arrived:—it was held, that the assured, who had abandoned, on receiving intelligence of the circumstances which happened previously to the time of the ship's being permitted to proceed to Madeira, were entitled to recover, as for a total loss, on the whole goods assured.[5] And, in a case already cited, hides were assured, "free of average," for a voyage from Valparaiso to Bordeaux, but after sailing the ship sprang a leak, which obliged her to put into Rio de Janeiro—the nearest port—to repair;—the whole cargo was necessarily landed, in order to repair the ship, and the hides were found to be in a state of incipient putrefaction, owing to the wet from the leak;—in consequence of the progress of the putrefaction, it became impossible to send on the hides, with any hopes of their reaching their port of destination in

[1] Irving *v.* Manning, 1 H. of L. Cases, 287.
[2] *Per* Lord Abinger, C.B., in Roux *v.* Salvador, 3 Bing. *n. c.* 283.
[3] Smith *v.* Scott. 4 Taunt. 126.
[4] Fletcher *v.* Inglis, 3 B. and A. 315.
[5] Cologan *v.* Lond. Ass. Co., 5 M. and S. 447.

a saleable state as hides,—as, had it been attempted to carry them on, they would, by the progress of the putrefaction, have lost the character of hides before they arrived there,—and they were consequently sold at Rio de Janeiro for the gross sum of £273; notice of the loss and of the sale was received at the same time by the assured, who brought his action as for a total loss:—and it was held, in the Court of Exchequer Chamber, that this was an absolute total loss on the hides so sold, for which the assured might recover, without giving notice of abandonment.[1] And a ship laden with hides and tobacco, having, in the course of her voyage, encountered bad weather and shipped much sea-water, by which the hides were wetted and made rotten, though neither the tobacco nor the packages of hides were in immediate contact with, nor directly damaged by, the sea-water; but, the putrefaction of the hides emitted a strong offensive smell, and this smell had communicated an ill flavour to the tobacco, by which it was damaged and made ill flavoured:—it was held, that the damage thus occasioned to the tobacco was a loss by perils of the sea.[2] But when a policy was expressed to be "on 1711 packages teas, valued at the sum insured, viz., $31,000," and contained a special warranty "free from damage or injury except caused by actual contact of sea-water with the articles damaged occasioned by sea perils: in case of partial loss by sea damage to dry goods" (a term not applying to tea), "cutlery, or other hardware, the loss shall be ascertained by a separation and sale of the portion only of the contents of the packages so damaged, and not otherwise, and the same practice shall obtain as to all other merchandises so far as practicable;" and the ship arrived with 449 of the packages of tea injured by actual contact with sea-water, the consequence of which was that the remaining 1262, although quite uninjured, could only be sold at a lower price than would have been realised if the whole parcel had arrived uninjured:—it was held, that the assured could only recover in respect of the actual damage to the 449 packages; and it would seem that even had there been no special warranty, he could have recovered no more.[3]

And every loss by perils of the sea must be shown, in order to make the underwriter liable, to have proceeded proximately—*i.e.*, directly, immediately,—from some of these perils:—as, in an assurance on goods for the markets of South America, on a voyage "from London to Maracaybo," and "warranted free from capture and seizure,"—when within a few miles of Maracaybo, the ship was driven on a sandbank and was totally wrecked, and the goods, which were sea damaged, and would have been entirely destroyed by the sea, were seized as prize and confiscated by the Spanish royalists:—it was held, that this was a loss by perils of the sea, and that the underwriters were liable.[4]

However, it is not a loss by perils of the sea, if the ship be destroyed by sea-worms, which are known to infest the rivers in warm climates;[5] nor by the vessel being rendered unseaworthy by rats eating holes in her bottom.[6] And where a ship, engaged in the coasting trade, and assured on an ordinary marine policy against perils of the sea, was placed to unload a cargo of timber on a beach, which the master knew was "hard,

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1 Roux *v.* Salvador, 3 Bing. *n. c.* 266. 2 Montoya *v.* Lond. Ass. Co., 6 W. H. and G. 451.
3 Cator *v.* Gt. Western Insce. Co, L. R. 8 C. P. 552.
4 Hahn *v.* Corbett, 2 Bing. 205; 9 Moore, 390. 5 Rhol *v.* Parr, 1 Esp. 444.
6 Hunter *v.* Potts, 4 Camp. 203.

steep, and shingly," and where the tide flowed and ebbed in the usual manner; there was no unusual wind-swell of the sea; but when the tide ebbed, the ship took the ground, and being long and narrow, and the middle only of the hull resting on the beach, she cracked and became hogged (*i.e.*, drooping at each end, and the centre raised up, or broken backed):—it was held, that this was not a loss by perils of the sea, but one arising from tear and wear, against which the underwriters did not assure, and that, consequently, they were not liable in an action on the policy for loss by perils of the sea.[1] When a ship sinks in smooth water without any apparent cause, her loss will not be covered by the policy, the presumption being that the misfortune was occasioned by unseaworthiness, and not by perils of the sea; but where there is evidence to rebut the inferred unseaworthiness, the whole question is for the jury.[2]

II.—LOSS BY CAPTURE.

The words of the policy comprehend every kind of capture to which a vessel at sea is exposed, whether lawful or unlawful,—capture by an enemy during war, or by way of reprisals,—or by pirates,—unless British capture, against which it is unlawful to assure;[3] and though the capture had been concerted between the captain of a privateer and the master of the ship.[4]

Capture is a total loss which entitles the assured to abandon, though the vessel be not condemned at all, nor carried into a port of the enemy; yet no capture by an enemy can be so total a loss as to preclude all possibility of recovery.[5] But if an abandonment be made upon the actual state of the facts at the time, and that offer to abandon *be accepted* by the underwriters, the abandonment is complete; and the underwriters must settle as for a total loss, notwithstanding intelligence of a recapture before an actual settlement takes place.[6]

But if, after notice of abandonment has been given, but before acceptance, or an action brought, the ship be recaptured and arrive at her port of destination, the assured cannot, under his offer to abandon, recover for a total loss. As where, in an assurance on a ship from Rio de Janeiro to Liverpool, the ship was captured, and afterwards recaptured; but, in the interval, the assured, having received intelligence of the capture, gave notice of abandonment; and, after the recapture, the ship arrived at Liverpool, having sustained only a partial damage:—an action having been brought as for a total loss, the court held, that the assured could only recover for a partial loss.[7] And where an abandonment was offered to be made by the assured to the underwriters, upon intelligence being received of the capture of the goods assured, which the underwriters refused to accept;—the assured was held not entitled to recover for a total loss, where, before action brought, the goods were recaptured, and arrived at the place of destination, by which a partial loss only was sustained; for the assured can only recover an indemnity for such loss as he has sustained *at the time the action is brought.*[8]

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1 Magnus *v.* Buttermer, 11 M. G. and S. 376.
2 Anderson *v.* Morrice, L. R. 10 C. P. 58.
3 Mar. 394; 1 Park, 151; 2 Arn. 808.
4 Arcangelo *v.* Thomson, 2 Camp. 620.
5 Mar. 394; 1 Park, 150; 2 Arn. 1060.
6 Smith *v.* Robertson, 2 Dow, 474.
7 Brotherstone *v.* Barber, 5 M. and S. 418.
8 Paterson *v.* Ritchie, 4 M. and S. 393.

Where the hull of the vessel had been restored before action brought, but the restitution was under a condition which made it uncertain whether the assured might not have to pay more than its worth,—the underwriters were held liable for a total loss. As, where a ship was assured from Liverpool to Sierra Leone, and was captured and plundered, her guns, masts, stores, and papers taken away, and the voyage lost,—and she was carried to Fayal, where proceedings were instituted in the Admiralty Court, and sentence was pronounced in favour of the assured; —but an appeal was made against such sentence, and the assured abandoned, which abandonment the underwriters refused to accept; and afterwards, the remainder of the cargo was sold at Fayal, and the rest left as a deposit to answer the event of the appeal, in order to obtain the release of the ship; and afterwards the ship returned to Liverpool:—it was held, that the assured might recover as for a total loss, in an action brought after the ship returned to Liverpool.[1]

If a vessel, warranted free of seizure in her port of lading, runs out to sea before she is properly loaded, in order to avoid such seizure, and is, in consequence, obliged to go to another port out of the course of the voyage assured, the underwriters are not liable for a loss consequent upon her having left her port in an unseaworthy state.[2] But where there is no such warranty, the underwriters would be liable.[3]

III.—LOSS BY ARRESTS OR DETENTION OF PRINCES.

Under these words in the policy, the underwriter is liable for all losses arising from the arrests or detentions of the ship or goods assured, by any Government or public body claiming to exercise the sovereign power, under whatever pretence, and whether right or wrong; and such arrest or detention is different from capture,—the one being for the purpose of making prize of the ship or goods, but the other, with a design temporarily to detain the ship or goods, or to confiscate them for a breach of the laws of the state.[4] Thus, when goods were insured from Japan to London, *via* Suez, Marseilles, and Paris, and by reason of the French and German war, it had become impossible to transmit the goods further than Paris; it was held, that this was a restraint entitling the assured to abandon and to recover as for a total loss.[5] So there may be a restraint by means of a blockade.[6]

An embargo is a proclamation or an order of Government, prohibiting the departure of ships or goods from some or all of the ports of a kingdom until further orders, and sometimes also to exclude ships from entering; and an embargo laid on ships and goods in the ports of this kingdom, by the sovereign's proclamation in time of war, is strictly legal. But whether the embargo be legally or illegally laid on, the injury to the owner is the same, and the assurer is equally liable for the loss.[7] If the embargo be laid on after the risk has commenced, the assured can abandon; but if before the risk commences, it dissolves the contract.[8]

If an embargo be laid on by his own Government, a foreigner assured

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1 M'Iver *v.* Henderson, 4 M. and S. 576.
2 O'Reilly *v.* Ro. Ex. Ass. Co., 4 Camp. 246.
3 O'Reilly *v.* Gonne, 4 Camp. 249.
4 Mar. 401; 2 Arn. 812.
5 Rodocanachi *v.* Elliott, L. R. 9 C. P. 518.
6 Gripel *v.* Smith, L. R. 7 Q. B. 404.
7 Mar. 403; 1 Park, 168; 2 Arn. 814.
8 2 Mar. 514; 2 Arn. 815.

in this country cannot recover for a loss occasioned by such an embargo in the ports of his own country. As where goods, consigned by an American citizen to a Liverpool house, were assured by the latter for account of the former; the ship was detained by an embargo at New York, her port of loading, by which the cargo was lost:—it was held, that the assured, being a party to the acts of his own Government, could not abandon, nor could the consignee, though in advance to the consigner for the goods, apply the policy to his own benefit, and abandon on this account.[1] And where a policy was effected on a ship from London to America, against all risks, American capture or seizure included; the ship and goods belonged to American subjects, and the ship sailed on her voyage laden with British goods; and, on her arrival in Virginia, she was seized by the collector of customs, and prosecuted by the Government for breach of the Non-importation Act; before the ship sailed from England, war was declared by the American Government, but that fact was not known in England till after her departure:—the assured having abandoned and claimed for a total loss,—it was held, that the fact of the assured being an American had not been disclosed to the underwriter; and also, that the assured could not recover for a loss caused by the acts of his own Government, and, therefore, that the action could not be maintained, even after the war had terminated.[2]

But where a policy was effected on a ship and goods, at and from London to any ports in the Baltic, with liberty to carry simulate papers and clearances, and until safely exported:—it was held, that the underwriter was liable for a loss arising from confiscation by the Prussian Government, notwithstanding the persons in whom the interest was averred were Prussian subjects; Prussia not being at war with this country; it being found, that, at the time of effecting the policy, all direct communication between this country and the ports in the Baltic was prohibited by the powers possessing ports there; but that, notwithstanding, an extensive course of commerce was carried on between this country and these ports, by means of simulate papers and clearances, which was well known to all descriptions of persons, such as the assured and the underwriters.[3]

The most common instances under this head, in recent times, are those which occur in the case of blockade, by which the blockading power can prevent all egress and ingress to the port blockaded. But, in order to render a voyage to a blockaded port illegal, the blockade must have been duly notified to the neutral states; it must be a real and effective blockade; and there must be a premeditated intention to break the blockade.

If, therefore, a vessel sail from this country for a foreign port, before notice of the blockade of that port is published in the *London Gazette*, but a policy on the goods is effected *after* that notice, and the vessel, with the goods on board, is captured by the blockading squadron for an alleged breach of the blockade; the assured, having given notice of abandonment, can recover, unless the underwriter can show that the captain had notice of the blockade during the voyage.[4] If, however, the captain receive intelligence, at any time during the voyage, that the port of destination is

[1] Conway *v.* Gray, 10 East, 536. [2] Campbell *v.* Innes, 4 B. and A. 423.
[3] Simeon *v.* Bazett, 2 M. and S. 94; in Ex. Ch., as Bazett *v.* Meyer, 6 Taunt. 824.
[4] Harratt *v.* Wise, 9 B. and C. 712.

in a state of blockade, and he, notwithstanding, continue the voyage to the blockaded port, and the ship is captured in an attempt to enter it, the underwriters, either on ship or cargo, are discharged.[1]

Whether the captain had notice of the blockade, is always a question of fact, which must be proved; and this knowledge is not to be presumed, on the principle that notice to a state is notice to all the subjects of that state.[2]

But if there has been no premeditated intention of breaking the blockade, and if it is part of the original intention to inquire as to the continuance of the blockade at some port of the blockaded country, the voyage is not illegal;—as it may be of the first importance for neutral merchants to possess the means of introducing their goods into the port which had been blockaded at the very earliest opportunity after the blockade has been relaxed.[3]

If a vessel sail to any port or ports in a blockaded river, after the blockade has been duly notified in this country, and she is taken in the river, and sent to a neighbouring port for adjudication, but is afterwards rescued by the master and crew, and brought back to the port from which she sailed;—after hearing of the capture, and after the rescue, but before they heard of it, the assured gave notice of abandonment:—it was held, that the voyage was not illegal, as the vessel might sail, without contravening the law of nations, for the purpose of inquiring whether the blockade continued, but that the assured had no right to recover for a total loss, by reason of their offer to abandon, because the abandonment must be viewed with regard to the actual state of the facts at the time the offer to abandon was made.[4]

IV.—LOSS BY AVERAGE CONTRIBUTIONS.

In a former part of this work, it has been shown what are and what are not subjects of general average; and, in the law of assurance,—because all losses sustained and expenses incurred, voluntarily and deliberately, to prevent a total loss of the ship and cargo, fall generally upon the whole or gross amount of the ship, freight, and cargo,—this head of loss must often occur.[5]

Generally, the underwriters are liable, under the general words of the policy, to indemnify the assured against such contributions as may fall upon them under the name of general average; and sums so paid may, therefore, often occur as partial losses, under an assurance of ship, goods, or freight.[6] Where there have been losses incurred during a voyage, which are proper subjects of a general average, it is the duty of the captain, on arriving at the port of destination, to cause an adjustment of the loss to be made on the parties liable to contribute, and he has a lien upon the cargo for the shippers' share of the contribution.[7]

It is now fixed that the average contribution must be adjusted according to the known law and usage of the port of destination; and when so

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1 Winder *v.* Wise, 1 D. and L. 238.
2 Harratt, *ut supra.*
3 *Per* Tindal, C.J., in Medeiros *v.* Hill, 8 Bing. *n. c.* 231; and Lord Tenterden, in Naylor *v.* Taylor, *infra.*
4 Naylor *v.* Taylor, 9 B. and C. 718.
5 1 Park, 281; Mar. 424; 2 Arn. 950.
6 Mar. 425; 1 Park, 281.
7 Mar. 433; 2 Arn. 950.

settled, it is conclusive, though it be adjusted differently from what it would have been in the home port.[1] And, therefore, where a general average has been calculated and settled at a foreign port, between the owner of the ship and the owner of the goods, according to the law of that port of discharge, and the merchant was obliged to contribute to expenses to which he would not have contributed according to the law of this country:—it was held, that he was not entitled to recover the sum so paid from the shipowner.[2]

But the assured must show, that the average has been so settled and adjusted, according to the established laws and usage of the country where the adjustment was made; and, if he do not, and if, in such adjustment, losses and expenses have been treated as subjects of general average, which, by the law of England, were only partial losses, that foreign adjustment will not be binding on the underwriters in this country, and the assured will not be entitled to recover an indemnity for these losses and expenses.[3]

V.—LOSS BY SALVAGE.

The subject of salvage has been also treated in a former part of this work (p. 265); and the underwriters are bound by the law maritime to indemnify the assured against the charges thereby incurred as a necessary consequence of the perils assured against; and, therefore, sums paid on account of salvage are, like average contributions, a charge for which, under the general words of the policy, the underwriter will be liable; and these, as an item of loss, will often occur in the adjustment of partial losses.[4]

VI.—LOSS BY COLLISION.

Collision has been already treated of; and, as a peril of the sea, the damages thereby occasioned are a loss within the policy. As formerly mentioned, a loss by collision may arise on occasion of four different accidents which may occur:—*1st*, The loss may happen without blame being attributable to either party, as where the loss is occasioned by a storm or such like, and where the misfortune must be borne where it lights; *2d*, Where both parties are to blame, as where there has been a want of due diligence or skill on both sides; and then, the rule is, that the loss must be apportioned between them, as having been occasioned by the fault of both; *3d*, It may happen through the misconduct of the suffering party only; and then, the rule is, that the sufferer must bear his own burden; or, *lastly*, It may have been the fault of the ship which run the other down; and, in that case, the injured party is entitled to an entire compensation from the other.[5]

When the loss is occasioned through the negligence or misconduct of the master or mariners of the vessel assured, in running down another vessel, this is a loss by the perils of the sea under the policy.[6] But when a collision is occasioned through the fault of one of the ships, and she has, in consequence, to pay a sum to the injured ship, this is not a loss by

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[1] 1 Park, 298; 2 Arn. 344.
[2] Simonds *v.* White, 2 B. and C. 803.
[3] Power *v.* Whitmore, 4 M. and S. 141.
[4] Mar. 435; 1 Park, 328; 2 Arn. 847.
[5] Woodrop *v.* Sims, 2 Dod, 84.
[6] Smith *v.* Scott, 4 Taunt. 126.

perils of the sea for which the underwriters are liable; nor are the wages and provisions of the crew, during the time of repairing a damage done to herself, such a loss;[1] and the underwriter is not liable for a loss by the expenses of the ship's going into port for repairs, and of her being repaired, and to pay these, the captain has to sell part of the goods on board,—the loss thence arising not being a loss by the perils of the sea.[2]

VII.—LOSS BY BARRATRY OF MASTERS AND MARINERS.

Barratry is one of the risks enumerated in the policy, and it may be defined to be any act or wilful misconduct or gross negligence of the master or mariners, for an unlawful or fraudulent purpose, by which, contrary to their duty, the owners may be prejudiced; and this includes every fraudulent and criminal act committed by the master or mariners to the prejudice of the owner.[3]

Every illegal act done by the master is barratry;—as, cruising in quest of prizes, without proper authority, and contrary to the orders of his owners;[4] or sailing out of port without paying the dues, or in disregard of an embargo;[5] or attempting to break a blockade;[6] or being engaged in smuggling;[7] or committing a deviation for the purpose of smuggling;[8] or if the master deviate from the voyage assured on a private adventure of his own;[9] these are barratrous acts, though done with no view of injuring the owners or benefiting himself, or though it should be done with a view to their interest. But it is not every wilful default of the master that will amount to barratry. Thus, when the master omitted to port the helm of his ship under such circumstances as to make him guilty of a "wilful default" within the meaning of section 299 of the Merchant Shipping Act, 1854, this was held not to amount to barratry (Grill *v.* General Steam Navigation Co., L. R. 3 C. P. 476).

To make the act of the master or mariners, done contrary to their duty, amount to barratry, it must be committed against, and in fraud of, the owners of the vessel; and, therefore, a mere breach of contract in altering a voyage for the benefit of the owners, and without any criminal intent on the part of the master, does not constitute barratry.[10] And where a ship took a prize, and, instead of proceeding with her voyage, according to the owner's orders, the master was forced by the mariners to return to port with the prize,—this was held not to be barratry, as not having been done to defraud the owners.[11] Nor, if the owner consent to or authorise an act or conduct of the master or mariners, which of itself would amount to barratry, yet, being done with his consent or concurrence, it is not barratry. As, where bills of lading are delivered to the owners of the goods, and, afterwards, the captain signs new ones, changing the destination of the ship, and the goods are disposed of for the use of the owners of the ship, and in fraud of the owner of the goods:—this being done with the concurrence of the shipowner, is not barratry.[12]

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1 De Vaux *v.* Salvador, 4 A. and E. 420.
2 Sarquay *v.* Hebson, 4 Bing. 131.
3 Mar. 411; 1 Park, 189; 2 Arn. 819.
4 Moss *v.* Byrom, 6 T. R. 379.
5 Robertson *v.* Ewer, 1 T. R. 126.
6 Everth *v.* Hannam, 6 Taunt. 375.
7 Earle *v.* Rowcroft, 8 East, 125.
8 Vallejo *v.* Wheeler, Cowp. 143.
9 Ross *v.* Hunter, 4 T. R. 33.
10 Stamma *v.* Brown, 2 Stra. 1173.
11 Elton *v.* Brogden, 2 Stra. 1264.
12 Nutt *v.* Bourdieu, 1 T. R. 323.

Barratry can be committed against the owners, only when the barratrous act is done without their knowledge or consent; and barratry may be committed against a general freighter, though by the consent of the owner; as, where the master, with the knowledge of the owner, deviates from the chartered voyage for the purpose of smuggling.[1] But, if the charterer or his agent has been the cause of the barratry, as putting smuggled goods on board, for which the vessel is seized and condemned,—this is not barratry against the general owner.[2]

When, however, the owner of a ship, by contract, places the vessel for a time under the sole control of the freighter, an act done by the general owner, or with his consent, in fraud of the freighter, is barratry.[3] And, although the shipowner may not have divested himself so far of his control over the ship as to lose his right of lien for the freight, yet barratry can still be committed if the act be done without consent of the freighter or special owner, though the general owner be consenting.[4] And if the same person be both master and owner, he cannot commit an act of barratry against himself, though a title by mortgage be in another, and he have only the equitable right of redemption.[5] But, if he be only a *part-owner*, and, at the same time, the master of the ship, he can commit barratry; as a master and part-owner fraudulently selling the ship and the cargo, and applying the proceeds to his own use:—this was held to be a loss assured against by the words of the assurers,—"barratry of the master."[6]

When barratry has been actually committed once by the master or the mariners, every loss happening, either during the time of committal or subsequent to it, is to be imputed to that cause, unless the policy is on time, and the loss happens after the expiration of that time.[7] As, when a ship with cargo was barratrously taken out of her course by the crew, and the ship and part of the cargo sold, and the remainder sent home by another vessel,—this was held to be a total loss from the time of committing the barratry;[8] but the loss, in consequence of the barratry, must happen during the voyage assured, and within the time stated in the policy, so that, where the master had been guilty of smuggling during the voyage, and the vessel had arrived at her port of destination, and been moored in safety some days before she was seized for the act of smuggling,—the underwriters were not liable.[9]

Yet as there is an implied promise by the assured, that a loss shall not happen through his means, therefore it is the duty of the assured to prevent, as far as in his power, all unlawful traffic, and all facilities for unlawful trading by his captain and seamen; and if he appear to have acted with gross negligence in this respect, the underwriters are not liable for the consequences of this negligence. As where a vessel was seized three several times for smuggling, and each time was released by making satisfaction to the seizing officer:—in an action against the underwriters for recovery of the three sums so paid, it was held that it was the duty of the assured to have prevented these repeated acts of smuggling; and

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1 Vallejo, *ut supra*.
2 Hobbs *v.* Hannam, 3 Camp. 93.
3 Soares *v.* Thornton, 7 Taunt. 627.
4 Tate *v.* Meek, 8 Taunt. 280.
5 Mar. 417; 1 Park, 209; 2 Arn. 832.
6 Jones *v.* Nicolson, 10 W. H. and G. 28; 23 L. J. 330.
7 Mar. 419; 1 Park, 189.
8 Dixon *v.* Reid, 5 B. and A. 597.
9 Lockyer *v.* Offley, 1 T. R. 252.

that by his neglecting to do so, and allowing the risk to be so monstrously increased, the underwriters were discharged.[1]

Although a fraudulent deviation from the voyage, without the knowledge or consent of the owner or general freighter, is barratry, yet an excessive delay, unexplained and unaccounted for, will be held, as increasing the duration of the risk, to be the same as a wilful deviation, and the assurer will be discharged, unless the captain has occupied that delay in committing a fraud upon his owners,—then such delay becomes criminal, and is a barratrous act.[2] But if the master merely mistake the meaning of his instructions, or err as to the best mode of carrying them into effect, this will not constitute barratry. As where a master mistook the meaning of his instructions, and without fraud went to New Zealand, in place of the East Indies,—this was held not to be barratry.[3] Where, also, the ship having sprung a leak, the master carried her into port, and before any survey was made, broke up her ceiling and end bows with crowbars, thereby injuring and weakening her; in an action on a policy for loss by barratry, this was held not to be barratry.[4] And to an action for loss by perils of the sea, on a time-policy for six months, it was pleaded, that such loss was occasioned wholly by the wrongful, negligent and improper conduct (the same not being barratrous) of the master and mariners of the ship by wilfully, wrongfully, negligently, and improperly (but not barratrously) throwing overboard so much of the ballast, that the vessel was rendered unseaworthy, and was lost by perils of the sea, which otherwise she would have encountered and overcome: but, it was held, that the underwriters were liable for the consequences of the wilful, but not barratrous, act of the master and crew, in rendering the vessel unseaworthy, before the end of the voyage, by throwing overboard a part of the ballast.[5]

VIII.—LOSS BY FIRE.

This is also one of the enumerated risks, for which the assurers are liable, whether the fire be accidental, or arise from the negligence or carelessness of the master or mariners; and this holds, where they assure against barratry,—*i.e.*, the highest species of misconduct,—and the immediate cause of loss is fire, though the remote cause be the negligence of the master or mariners.[6] As where the mate, being in sole charge of a ship, lighted a fire in the ship's cabin, and in the evening went on board another ship lying contiguous; at twelve o'clock at night, he looked out from that ship, found everything quiet, and went to bed; but in the morning he was alarmed by fire, and the vessel was consumed:—it was held, that the underwriters were liable for the loss.[7] And if the master should voluntarily set the vessel on fire, to prevent her falling into the hands of a privateer of greatly superior strength, by which she is chased,—this is a loss for which the underwriters are liable.[8]

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1 Pipon *v.* Cope, 1 Camp. 434.
2 Roscow *v.* Corson, 8 Taunt. 684.
3 Bottomley *v.* Bovil, 5 B. and C. 210.
4 Todd *v.* Ritchie, 1 Stark, 240.
5 Dixon *v.* Sadler, 5 M. and W. 405; Affd. in Ex. Ch., 8 M. and W. 895.
6 Walker *v.* Maitland 5 B. and A. 711.
7 Busk *v.* Ro. Ex. Ass. Co., 2 B. and A. 73.
8 Gordon *v.* Remmington, 1 Camp. 123.

Should the fire be occasioned by the damaged state of the cargo, the underwriters on the goods are not liable; but should the loss not be so occasioned, the underwriters are not discharged, though they should not have been informed of the state of the goods.[1] But damage arising from the spontaneous ignition of the goods, owing to their intrinsic state, is not a loss for which the underwriters are liable.[2]

IX.—LOSS BY DEATH OF ANIMALS.

Living animals may be assured, and in the policy the assurer usually warrants the animals "*free from mortality*," and these words protect the assurer where the death of the animals arises from natural causes, but do not protect him where their death arises directly from any of the perils assured against, so that if their death at sea is occasioned by tempest, or by being killed in consequence of the agitation of the ship in a storm, or by any accident arising from any of the enumerated risks, the underwriters are not liable.[3]

As where mules and oxen were assured, "warranted free from mortality and jettison;" and in the course of the voyage, some of the animals were killed, and others, from the same cause, received so much injury that they died before the termination of the voyage assured:—it was held, that this was a loss by a peril of the sea within the warrantry, for which the underwriters were liable.[4] And where horses were assured, "warranted free from mortality and jettison;" but in the course of the voyage, in the agitation of the ship in a storm, the horses broke down the partitions, and by their kicking wounded and bruised each other so much, that they all died:—this was held to be a loss by a peril of the sea, and that the assured were entitled to recover.[5]

But if the death be natural, or occasioned merely by disease, the underwriters are not liable.[6]

X.—LOSS BY OTHER PERILS.

The general words of the policy, "all other perils, losses, and misfortunes that have or shall come to the hurt, detriment, or damage of the said goods and merchandises, and ship, and on any part thereof," comprehend all losses which, though not arising from any of the perils specially enumerated, yet arise from a cause coming near to some of these, during the voyage, and not imputable to the owners, captain, or crew, but are properly also cases of sea damage, which these words are intended to cover.

As where a vessel, by mistake, was taken in tow by a British man-of-war, and was obliged, in order to keep up with her, to carry a press of sail in a gale of wind and a heavy sea, by which she shipped a quantity of water, and damaged the cargo:—this was held to be a loss by perils of the sea, though it was not occasioned by the act of any individual.[7] So,

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[1] Boyd *v.* Dubois, 3 Camp. 133.
[2] 2 Arn. 806.
[3] 2 Arn. 802.
[4] Lawrence *v.* Aberdein, 5 B. and A. 107.
[5] Gabay *v.* Lloyd, 3 B. and C. 793.
[6] Mar. 375; 2 Arn. 802.
[7] Hagedorn *v.* Whitmore, 1 Stark, 157.

also, where a vessel was sunk by another mistaking her for an enemy and firing upon her:—this was held, in an action stating the particular circumstances, to be a loss within the general words of the policy.[1] Where, also, the policy was on freight, at and from the Coromandel Coast to Bourbon, and the vessel put into a port on that coast for repairs; a cargo was purchased, and ready to be sent on board, at a place about seven miles from the port, but the ship was lost by an accident in going out of the dock: the policy covered perils of the sea, and all other perils, losses, and misfortunes:—it was held, that the cargo being ready when the ship was about to leave the dock, the risk attached, and that the loss was a loss within the terms of the policy.[2] Also, where the captain of a Spanish ship, in order to prevent a quantity of dollars from falling into the hands of an enemy, by whom he was about to be attacked, threw the same into the sea, and was immediately afterwards captured:—it was held, that if this was not a loss by jettison, it was something of the same kind, and, therefore, came with the general words of the policy.[3] And where a vessel, assured for twelve months at sea and in port, was, after discharging her cargo, placed in a graving dock to be repaired, and near to a wharf in that dock, and, while there, was, by the violence of the winds and the weather, thrown over on her side, whereby she struck the ground with great violence and was bilged:—this was held a loss within the general words of policy.[4]

In one case, goods were assured on board a British ship, and were warranted "free from capture and seizure, and the consequences of any attempt thereof," and the perils assured against were as usual,—"of the seas, men-of-war, fire, enemies, pirates, rovers, thieves, jettisons, letters of marque and counter-marque, reprisals, takings at sea, arrests, restraints, and detainments of all kinds, and of all other perils, losses and misfortunes;"—the ship, in her passage down the Danube, passed within shot of a Russian fort,—war then being between Russia and Turkey, but not between Britain and Russia,—and the fort fired into the ship and sunk her, having mistaken her for a Turkish vessel:—it was held, that the warranty was not confined to legal capture or seizure, but an illegal capture or seizure was within both the warranty and the foresaid perils specially assured against.[5]

And, in an action for a total loss upon a policy of assurance on advances for the transport of Chinese emigrants from China to Peru, for their outfit and provisions, and the assurance was in the usual form; and, in the course of the voyage, the emigrants feloniously and piratically murdered the captain and part of the crew, and feloniously stole and carried away the ship:—it was held, that the immediate cause of the loss was the seizure of the ship, and that was one of the perils assured against, either as an act of piracy and theft, or as a peril of the same kind, within the general words.[6]

Again, where a steamer was loading in harbour, and her draught was increased until her discharge pipe was brought below the water, which then flowed into the hold through some cocks which had been negligently

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1 Cullen *v.* Butler, 5 M. and S. 461.
2 De Vaux *v.* I'Anson, 5 Bing. *n. c.* 156.
3 Butler *v.* Wildman, 3 B. and A. 398.
4 Philips *v.* Barber, 5 B. and A. 101.
5 Powell *v.* Hyde, 5 El. and Bl. 607.
6 Palmer *v.* Naylor, 10 W. H. and G. 382.

left open by the crew, and the water injured the goods of the assured:—it was held that the injury was a loss by "other perils."[1] But where a voyage was prolonged by stormy weather so that part of the cargo, consisting of meat, became putrid and had to be thrown overboard, this was held, not a loss within the words "other perils."[2]

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[1] Davidson *v.* Burnand, L. R. 4 C. P. 117.

[2] Taylor *v.* Dunbar, L. R. 4 C. P. 206.

XI.—OF ABANDONMENT.

When the voyage is lost, or rendered not worth the pursuing, or when the subject assured is lost, or rendered of little or no value, by any of the perils assured against,—this is held in law to be a total loss, absolute or constructive, as the case may be, and in either case the assured is entitled to abandon all his interest in the subject assured, and all his hopes of recovery, to the assurers, and to call upon them as for a total loss. An abandonment, once validly made, has the effect of itself of transferring, renouncing, and giving up to the assurers all the right, title, and claim, which the assured had in and to the subject assured, to the extent of the assurance; and therefore, by the abandonment, the assurers come into the place of the assured, and become legally entitled to all that remains, and that can be rescued from destruction, of that which has been abandoned.[1]

To entitle the assured to abandon, there must have been a total loss, either actual or constructive; but should the vessel or goods arrive, no partial damage, however great, can authorise the assured to abandon.[2] This subject, therefore, divides itself into the following heads:—1. In what cases the assured may abandon; 2. Within what time abandonment must be made; 3. The form and effect of the abandonment; and, 4. The disposal of the effects abandoned.

1.—IN WHAT CASES THE ASSURED MAY ABANDON.

Capture, arrest, or detention, and in some cases, blockade, give the assured at first sight a right to abandon; but if, after notice of abandonment, and before it be accepted, or action brought, the vessel and cargo be restored, there is no total loss, and the assured is only entitled to recover as for a partial loss. As, where a vessel was captured on the 21st September, during her homeward voyage, and on the 25th of the same month was recaptured; and on the 30th, the assured received intelligence of the capture, but not of the recapture, and on the day following gave notice of abandonment; on the 2d October the intelligence of the recapture was confirmed; but, on the 6th, the assured received the first intelligence of the recapture, and that the vessel was then in safety at a place in Ireland, in possession of the recaptors, which intelligence he communicated to the underwriters, with notice that he persevered in the abandonment; and the vessel arrived in Liverpool, and earned freight:—but, in an action for a total loss, it was held, that the assured was only entitled to recover as for an average loss.[3] So, where a ship was assured to the coast of Africa, and back, and while loading her homeward cargo, she was seized by the crew and carried to a distant country, and her cargo plundered, and the ship deserted; but she was afterwards retaken by another ship, and was brought, with a small part of her cargo, to an English port (not her port of destination), and part of her rigging was gone, and she could not be made fit for her voyage again without considerable expense in providing a crew and stores:—it was held, that this was not a total

[1] Mar. 443; 1 Park, 332; 2 Arn. 992. [2] Mar. 49; 2 Arn. 994.
[3] Bainbridge v. Neilson, 10 East, 329.

loss, so as to entitle the assured to abandon, after notice to the underwriters.[1] And where a ship was assured from Rio Janeiro to Liverpool, and the ship was captured and afterwards recaptured; but, in the interval, the assured, having received intelligence of the capture, gave notice of abandonment, and, after the recapture, the ship arrived in Liverpool, having sustained a partial damage:—in an action for a total loss, it was held, that the assured could only recover for a partial loss.[2]

Shipwreck, or the loss of the ship by its being sunk, dashed to pieces, or so broken as to exist no longer as a ship, or stranding, followed by shipwreck, entitles the assured to abandon; but, in the case of stranding, the stranding must be followed by such circumstances as to render the vessel incapable of being got off, and of performing her voyage, or must take place where there are no capable means of relief, and where the expense of recovery or removal would exceed the value.[3]

To entitle the assured to abandon, there must have been, during the voyage assured, or the continuance of the risk, a loss either actually or constructively total; and it has been said by high authority:—"The underwriter engages that the subject of the assurance shall arrive in safety at its destined termination. If, in the progress of the voyage, it becomes totally destroyed or annihilated, or if it be placed, by reason of the perils against which he assures, in such a position that it is wholly out of the power of the assured, or of the underwriter, to procure its arrival, he is bound, by the very letter of his contract, to pay the sum assured."[4] And in regard to the ship, it is held a complete total loss, "if it be reduced to a congeries (a heap) of planks, the vessel is a wreck;"[5] and by the House of Lords it has been held, that "a vessel is totally lost within the meaning of the policy, when it becomes, *as a ship*, of no use or value to the owner, and is as much lost as if it had gone to the bottom of the sea, or had been broken to pieces, and the whole, or great part, of the fragments had reached the shore as wreck:—and a loss is also to be considered as total when a prudent owner, if unassured, would not have repaired."[6]

Therefore, if the subject assured is totally lost to the owner, the necessity of any abandonment is altogether done away; but if that subject subsists in kind, and there is a chance of its recovery, there must be an abandonment,—so that, if, between the notice and acceptance of the abandonment, or action brought, the ship or goods be restored, or intelligence received of their safety, the assured cannot insist in his abandonment,[7] unless when the underwriters have accepted the abandonment, and declared themselves satisfied, in which case the abandonment is not disturbed by subsequent events.[8]

But, if an abandonment be made under circumstances which would entitle the assured, *at the time*, to recover for a total loss, it is not defeated, so as to become an average loss only, by the restitution and return of the hull of the ship before the action be brought, if this restitution be under such a condition as to make it uncertain whether the

[1] Falkner *v.* Ritchie, 2 M. and S. 290.
[2] Brotherton *v.* Barber, 5 M. and S. 418. [3] Mar. 449; 2 Arn. 1080.
[4] *Per* Lord Abinger, in Roux *v.* Salvador, 3 Bing. *n. c.* 283.
[5] *Per* Lord Tenterden, in Cambridge *v.* Anderton, 2 B. and C. 601.
[6] Irving *v.* Manning, 1 H. of L. Cases, 287. [7] Mar. 449; 1 Park, 356; 2 Arn. 1053.
[8] Smith *v.* Robertson, 2 Dow, 474.

assured may not have to pay more than its worth. When a vessel, being in a leaky state, was deserted by her crew, acting in good faith for the preservation of their lives, and she was, on the following day, found and taken possession of by another crew, who succeeded in taking her into port, where she was repaired and sent to this country, but under claim for salvage and repairs equal to, or exceeding, her value :—the owners having given notice of abandonment before they received any tidings of the vessel's safety, it was held they were entitled to recover against the underwriters for a total loss.[1] And where a vessel, having the goods assured on board warranted free from average, unless general, was placed in so much danger by perils of the sea, that the crew deserted her for the preservation of their lives, and the owners of the goods, on receiving intelligence of this, gave notice of abandonment; a few days afterwards the vessel was found by some fishermen, and towed into port and repaired; but the goods, which were of a perishable nature, had been so much injured by sa't water, that they would not have been worth anything, if forwarded to their place of destination :—it was held, that the assured were entitled to recover for a total loss.[2] And when a ship assured under a time policy was captured by pirates during the running of that time, and was recaptured by a Queen's ship, and kept as a prize; and thereupon the owners gave notice of abandonment :—afterwards the ship was sent to England by a prize-master, but, meeting with bad weather, he put into a place and sold her,—then the owners brought an action against the underwriters for a total loss :—and it was held, that they were entitled to recover for a total loss, as capture by pirates was a total loss in the first instance, which could not be restricted to a partial loss, unless the ship was restored to the owners' possession before action brought, or they had the power of resuming their possession before action brought.[3] And, in another case, a ship, on her voyage, was seized by a Queen's ship for being engaged in the slave trade, and was sent with her cargo to St. Helena, where the ship was condemned as forfeited, and the owner of the goods was condemned in double their value, and the goods were ordered to be detained until the penalty was paid. Soon afterwards, the ship and a portion of the perishable goods were sold, and the rest were detained at St. Helena in custody of the court :—but, when these proceedings were known in this country, notice of abandonment was given, and an appeal was taken to the Queen in Council, and the Privy Council reversed the decision of the Admiralty Court, and ordered restitution of the ship, with cost and damages, and of the cargo, and of the proceeds of the part sold, but without costs and damages :—in an action against the underwriters on the goods, it was held, that the taking of the ship, with the goods on board, being unjust, was a peril assured against; and that, on the seizure and notice of abandonment, there was a total loss, and the assured had a right to prosecute for a total loss,—that having arisen from the direct consequence of a peril assured against.[4]

The title of the underwriters to an abandoned ship or cargo does not date from their acceptance of the abandonment, but from the time of the loss.[5] And, therefore, nothing short of a total loss of ship or cargo, either

[1] Holdsworth *v.* Wise, 7 B and C. 794.
[2] Parry *v.* Aberdein, 9 B. and C. 411.
[3] Dean *v.* Hornby, 3 El. and Bl. 180.
[4] Lozano *v.* Janson, 5 Jur. *n. s.* 1401.
[5] Cammell *v.* Sewell, 3 H. and N. 617.

actual or constructive, will entitle the assured to abandon and claim for a total loss. Thus, a privateer, assured for a cruise of four months, free from average, had, during that time, been plundered of her boat, firearms, &c., by her crew, who had mutinied and deserted; but the ship arrived, after the four months, in good safety at her proper port:—it was held, that the policy being free of average, the assured could not recover, except for a total loss, as the assurance *was not for the voyage, but on the ship for the voyage:* and as the vessel was found in safety at her proper port, at and after the end of the four months, there could be no total loss.[1] And a ship, assured to New York, was so much damaged and leaky in the course of the voyage, that the crew, overcome with fatigue, were obliged to desert her for the preservation of their lives, but a new crew from another vessel took possession of her, and succeeded in bringing her into Newport, Rhode Island, where she was sold for payment of the salvage, without any endeavour on the part of the owners in New York to prevent it:—it was held, that the assured could not abandon and recover as for a total loss.[2]

In regard, again, to the assured cargo, the owner's right to abandon will depend upon whether, when the goods are saved, they are of a perishable nature or not, and can or cannot be forwarded to their original destination. If the goods are imperishable, and are under the control of the assured or his agent, or still capable of being sent on,—this will be merely a delaying, a retardation of the voyage, which does not entitle the assured to abandon. As, in one case, goods, being copper and iron, were assured at and from London to Quebec, and were warranted free of particular average; and, from sea damage received in the course of the voyage, the ship had to go into a port and undergo repair, and the iron was found to be partially damaged; but the repairs occupied so long as to prevent the ship reaching Quebec that season, and no other ship could be procured to forward the cargo,—so that the voyage was given up, and, in four weeks after the accident, the ship sailed on another voyage:—it was held, that, though the assured had given notice of abandonment, he could not recover as for a total loss, because, this was a mere retardation of the voyage, not at all connected with the destruction of the subject assured.[3]

But, if the goods or cargo be of a perishable nature, and he has no means of recovering his goods, whether this inability arises from their destruction, or from any other insurmountable obstacle,—so as to send them on to their destination,—to the assured, the loss is total in its nature, and the necessity of any abandonment is quite done away.[4] Even in the case of a ship, if, by any of the perils assured against, the ship ceases to retain her character of a ship, and becomes a mere wreck, or becomes not worth the repairing, or can only be repaired at an expense exceeding her value, the assured is entitled to recover for a total loss, without giving notice of an abandonment. As a vessel, assured from Quebec to Bristol, got upon rocks, about 200 miles below Quebec, in the St. Lawrence, in foggy and tempestuous weather; and being there much injured, she, after survey by experienced persons, was found to be not reparable at all, or not reparable without an expense exceeding her value when repaired:—it was held,

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[1] Pole *v.* Fitzgerald, 5 Brown's P. C. 131.
[2] Thorneley *v.* Hebson, 2 B. and A. 513.
[3] Anderson *v.* Wallis, 2 M. and S. 240.
[4] Mullet *v.* Sheddan, 13 East, 304.

that the assured could recover for a total loss, without giving notice of abandonment.[1] And, in a valued policy, the vessel was valued at £2000, but, having been stranded at the entrance of the Hull dock, it would have cost £1450 to have repaired her, and, when repaired, she would not have been worth that sum :—the jury having found that she was not worth repairing, the court held, that this was a total loss, the vessel having ceased to exist for any useful purpose as a ship, and that the assured was entitled to recover the sum at which the vessel was valued in the policy.[2]

If the assurance be upon ship, cargo, and freight, and the ship be so damaged by perils of the sea, that she is obliged to put back in distress, and she cannot be repaired, or the cargo forwarded, in consequence of which the ship and the cargo are sold:—this is a total loss of ship, cargo, and freight, for which the assured are entitled to recover ;[3] and if the voyage be either absolutely lost, or rendered not worth the pursuing, or if, by the detention, the goods assured, being of a perishable nature, are lost, or so damaged as not to be worth the expense of forwarding, the assured on goods or freight will be entitled to abandon, and recover as for a total loss.[4] But, a distinction must be made as to the assured's right to abandon, between goods of an imperishable and goods of a perishable nature, which has been well stated by high authority :—"If the goods are of an imperishable nature; if the assured become possessed or have the control of them; if they still have an opportunity of sending them to their destination,—the mere retardation of their arrival at their original port may be of no prejudice to them, beyond the expenses of reshipment in another vessel. In such a case, the loss can be but a partial loss, and must be so deemed, even though the assured should, for some real or supposed advantage to themselves, elect to sell the goods where they have been landed, instead of taking measures to transmit them to their original destination. But, if the goods, once damaged by the perils of the sea, and necessarily landed before the termination of the voyage, are, by reason of that damage, in such a state—though the species be not utterly destroyed —that they cannot with safety be reshipped into the same or another vessel; if it be certain, that, before the termination of the original voyage, the species itself would disappear, and the goods assume a new form, losing all their original character; if, though imperishable, they are in the hands of strangers, not under the control of the assured; if, by any other circumstance over which he has no control, they can never, or within an assignable period, be brought to their original destination ;—in any of these cases, the circumstance of their existing in specie at that *forced termination* of the risk, is of no importance. The loss is, in its nature, total to him who has no means of recovering his goods, whether his inability arises from their annihilation, or from any other insuperable obstacle."[5]

But, after the assured has received intelligence of the loss and then state of the assured subject, and has resolved, thereupon, to claim a total loss from the assurers,—he ought, within a proper and reasonable time, to make his choice to abandon or not; and, if he is to abandon (where that

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1 Cambridge *v.* Anderton, 2 B. and C. 691.
2 Allan *v.* Sugrue, 8 B. and C. 561.
3 Manning *v.* Newenham, 1 Park. 368.
4 1 Park, 377; Mar. 475.
5 *Per* Lord Abinger in Ex. Ch. in Roux *v.* Salvador, 3 Bing. *n. c.* 278.

is necessary), he must, within a due and reasonable time after he receives an account of the loss, give written notice to his underwriters of the loss and of his *thereby abandoning to them* the whole assured subject. Because, if, instead of giving his underwriters this due written notice of his abandonment, the assured tamper with the subject assured, in the expectation of making available what he can, and, only after his endeavours turn out to be useless, he then gives this notice,—such notice, thus given, will be too late.[1]

Thus, wheat was assured, and, in going down the river from Waterford, the ship struck on a rock and filled with water, and the wheat was damaged, but, being partly saved and in the hands of the shipper at Waterford, was kiln-dried, and might have been forwarded, as the rest of the cargo was, after the same operation, to its port of destination, but the owner, after dealing with it for nearly a month as his own, abandoned and claimed for a total loss:—it was held the abandonment was too late.[2] Where, also, tobacco and sugar were assured "free from average," and the ship was wrecked, and, though the cargo was damaged by perils of the sea, it was in the hands of the owner at Heligoland, and might have been forwarded to the port of destination:—it was held, that this was not a total loss, however unprofitable the cargo might afterwards be.[3] And, where rice was assured free of particular average, from Charleston to Liverpool, and the ship, with rice and other goods, arrived within the limits of the port of Liverpool, but before she could be brought to her moorings, or be at all unloaded, she ran aground and was wrecked, and the whole cargo was greatly damaged, and was taken out of her by craft, and carried to the consignees at Liverpool, and produced little more than freight and salvage, but the rice did not produce sufficient to pay the freight:—it was held, that this was a case of partial loss only.[4]

But, as already said, where there is an *actual* total loss, the assured is entitled to recover without notice of abandonment; for it is a principle of insurance law that no abandonment is necessary where there is nothing which, on abandonment, can pass to or be of value to the underwriters. Where, therefore, there was a policy on ship and also on homeward charter-party freight, and the ship was so injured on the outward voyage that the shipowner abandoned to the underwriter on the ship, there was nothing to pass to the underwriter on the homeward freight, and the assured was held entitled to recover in respect of the freight without giving notice of abandonment.[5] Where, also, the ship was so much injured by perils of the sea, as not to be reparable at all, without an expense exceeding her value when repaired:—it was held, that the assured were entitled to recover without giving notice of abandonment.[6] And, where hides, assured from Valparaiso to Bordeaux, free of particular average, unless stranded, arrived at Rio Janeiro on their way to Bordeaux, in a state of incipient putrefaction, occasioned by a leak in the ship, and were sold for a fourth of their value at Rio, because, by the process of putrefaction, they would have been destroyed before they could have arrived at Bordeaux; the assured received the news of the damage to the hides,

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[1] Mar. 481; 2 Arn. 470.
[2] Anderson *v.* Ro. Ex. Ass Co., 7 East, 68.
[3] Thompson *v.* Ro. Ex. Ass Co., 16 East, 214.
[4] Glennie *v.* Lond. Ass. Co., 2 M. and S. 371.
[5] Rankin *v.* Potter, L. R. 6 E. and G. 83.
[6] Cambridge *v.* Anderton, 2 B. and C. 691.

and of their sale, at the same time:—it was held, that the assured could recover as for a total loss without abandonment.[1]

But the mere retardation of the voyage, or the loss of the voyage for a season, will not entitle the assured on goods to abandon, where they are not of a perishable nature; nor will the assured on freight be entitled to abandon, in consequence of such retardation, if freight be actually earned, though that freight be less than the expense occasioned by the delay; as, where a vessel was detained at Riga until the frost set in, by which she was kept all winter, but she earned freight next spring, though the expense of detention exceeded the freight so earned:—it was held that the underwriters were not liable for this expense as an average loss, but it must be borne by the shipowner.[2]

II.—WITHIN WHAT TIME ABANDONMENT MUST BE MADE.

There is no positive time fixed in our law, within which the assured must give notice of abandonment to the underwriters, where that is necessary; but the rule is, that, so soon as the assured receives notice of a loss, he must promptly make his election to abandon or not; and, if it be to abandon, he must give the underwriters notice, within a reasonable time after he receives intelligence of the loss, else any unnecessary delay in giving this notice, will be held as a waiving of his right to abandon.[3] And, though the assured is not, in any case, *bound* to abandon, or his agent (the shipmaster, for instance), yet he is bound to make his election speedily, either to abandon or not, and in the *first instance;* and by this is meant the earliest opportunity after the assured shall have so examined the state of the ship or cargo as to enable him to determine whether he shall abandon or not. Like as, where sugar assured (but not warranted free of average) from Liverpool to Calais, was shipped, and the ship sailed on 1st December, but, by stress of weather, was put back to Liverpool on the 20th, of which on the same day the agents there wrote to the assured in London, and that next day the cargo was to be examined:—the first survey was made on 21st December, and on the 24th the agents wrote that the damage was not so great as had been supposed, and that *they intended sending the cargo on;* but, on the 29th, they wrote that a great many boxes were damaged, but that *they meant to send the rest on;* and on 7th January they communicated the conclusion of the final survey, that the goods were all more or less damaged, and that it would be advisable to sell them where they lay on account of the underwriters; the assured received this letter on 9th January, and immediately sent it, with notice of abandonment, to the underwriters, who desired the assured to act as if unassured:—in an action against the underwriters, Lord C.-J. Gibbs told the jury to consider whether the time taken in making abandonment *was longer than sufficient for ascertaining and judging of the state of the cargo*, and the jury having found that it was not, the Lord C.-J. said, in delivering the opinion of the court on a motion for

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[1] Roux *v.* Salvador, 3 Bing. *n. c.* 266. [2] Everth *v.* Smith, 2 M. and S. 278.
[3] Mar. 478; 1 Park, 374; 2 Arn. 1164.

a new trial, "It is perfectly true that the assured *are bound to make their election in the first instance*, whether they will consider the loss as a partial loss and keep the goods, or a total loss, and give them up to the underwriters." "But, it is equally true, that, *by the first instance is meant the earliest opportunity after they have examined into the state of the cargo;* and they must have an opportunity of doing that, because it is only by the result of that examination that their decision can be ultimately (at last) determined."[1] By merely labouring to *avert* a loss the assured will not lose any ultimate right to abandon.[2]

But the assured must not lie by, and either treat the loss as an average loss, and take his own measures for the recovery of the subject assured, or speculate on events,—as waiting for the rise or fall of markets, or until the issue of a final survey,—when, *at first*, the facts are such as to show all that can be required for enabling the assured to determine.[3] And what shall be deemed a *reasonable time*, within which the assured ought to abandon after he receives intelligence of the loss, must depend upon the circumstances of each particular case.[4]

Thus, where a vessel, laden with wheat in barrels, struck on a rock, filled with water, and was run on shore, where she lay for four weeks, the hull being under water at high tides:—the assured began to take out the wheat on 31st January, and, of 696 barrels under the policy, 73 were saved and kiln-dried, and might have been forwarded; but, after dealing with it for some time as his own, the assured, on 18th and 28th February, gave notice of abandonment:—but it was held to be out of time.[5] And in another case, in which the assurance was on flour in barrels, the vessel sailed, but was driven back to port in disrepair; on 16th November the cargo was returned and sold, and the adventure was given up; notice was given of abandonment on 21st December, and it was held, that there had been an undue delay in abandoning.[6]

When a ship may be presumed to have foundered at sea,—as, where a reasonable time has elapsed after she ought to have arrived, so as to afford ground for the presumption, —or, the arrival of other vessels that sailed from the same port, or the existence of a report that she had foundered at sea,—the assured can abandon, and claim for a total loss;[7] and, if one of several owners, jointly interested in a cargo, effects an assurance for the benefit of all, he may also give notice of abandonment for all.[8]

Should the assured be desirous to abandon, but is dissuaded from it by the underwriters, who order the vessel to be repaired, and, after she is repaired, and completes her voyage, and earns freight, they refuse to pay for these repairs, in consequence of which the vessel is sold to satisfy that debt:—the underwriters will be liable for all the injury that has accrued, through this interference, to the amount of the assurance.[9] And, when an abandonment is necessary, and has been duly made, the underwriter is bound to say, within a reasonable time after the notice of abandonment, whether he will accept of it or not.[10]

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1 Gernon *v.* Ro Ex. Ass. Co., 6 Taunt. 381.
2 Kidston *v.* Empire Co., L. R. 1 C. P. 543.
3 1 Park, 400; 2 Arn. 1170.
4 2 Arn. 1164.
5 Anderson *v.* Ro. Ex. Ass. Co., 7 East, 38.
6 Hunt *v.* Ro. Ex. Ass. Co., 5 M. and S. 47.
7 Mar 480; 2 Arn. 1004.
8 Hunt, *ut supra.*
9 Da Costa *v.* Newham, 2 T. R. 407.
10 Hudson *v.* Harrison, 3 B. and B. 97.

III.—THE FORM AND EFFECT OF ABANDONMENT.

When notice of abandonment is necessary, no particular form or express set of words is requisite, and it may be even made verbally; only the abandonment must be certain and explicit, and it must not be left to the underwriters to conclude, as mere matter of *inference*, that an abandonment has been made, which must be absolute of the whole effects at risk, and it must be explicit and direct;[1] and it is therefore advisable, though not absolutely necessary, to make use of the word "abandon."[2]

Accordingly, a letter, addressed to the assured, stated that the ship had been forced on shore, and a quantity of sugars damaged, and this letter was shown by the broker to the underwriters, who, in answer, directed the assured to do the best they could with the injured property:—this letter was held not to amount to a notice of abandonment, but merely to import a wish that the assured would make the partial loss as light as possible.[3] But, it is only necessary to make an abandonment when the subject-matter of the assurance, or part of it, remains, or when there are hopes of its recovery; but where, in the course of the voyage, this subject-matter becomes totally destroyed or annihilated; if, by any of the perils assured against, it loses its form and species, or is placed in such a position as to be wholly out of the power of the assured or the underwriters to procure its arrival, —the assured can recover for a total loss, without any notice of abandonment.[4] When, therefore, there is only a *constructive* total loss, as already explained, an abandonment is necessary.

Thus, where, in a policy on freight, the ship, after having received her cargo, was, by sea damage, so disabled as to make it impossible for her to bring it home, and it had to be unshipped at a port where it was impossible to repair the vessel, and she had to be sold; and, where the vessel had struck the ground and sprung a leak, and, for safety, had to be run ashore, in tempestuous weather, in a situation of extreme peril, where it was thought prudent to sell her:—in these cases, no notice of abandonment was necessary.[5] And when the ship was so much injured by perils of the sea as to become a total wreck, and to lose her character of a ship, so as not to be reparable, or to be reparable only at an expense exceeding her value; —this is a total loss, and the captain may sell her, and the assured can recover for a total loss, without giving notice of an abandonment.[6]

So, also, where the vessel, at the commencement of the voyage, was so much damaged by perils of the sea as to render it advisable to take out her cargo and sell her; an abandonment, under an assurance on freight, is not necessary to render the underwriters liable for a total loss.[7] And, where hides were assured from Valparaiso to Bordeaux, free of particular average, unless the ship be stranded, and they arrived at Rio, on their way to Bordeaux, in a state of incipient putridity, occasioned by a leak in the vessel, and were there sold for a fourth of their value, because, by the process of

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1 Mar. 486; 1 Park, 401.
2 Parmeter *v.* Todhunter, 1 Camp. 542; and Currie *v.* The Bombay Co., L. R. 3 P. C. 73.
3 Thelluson *v.* Fletcher, 1 Esp. 73.
4 *Per* Lord Abinger, in Roux *v.* Salvador, 3 Bing. *n. c.* 287.
5 Green *v.* Ro. Ex. Ass. Co., 6 Taunt. 66; Idle *v.* Ro. Ex Ass. Co., 8 Taunt. 755
6 Cambridge *v.* Anderton, 2 B. and C. 691.
7 Mount *v.* Harrison, 4 Bing. 388.

putrefaction, they would have been destroyed before they could have arrived at their destination; the assured received the news of the damage to the hides, and of their sale, at the same time:—and it was held, that the assured was entitled to recover for a total loss without abandonment.[1]

In all cases, the assured, if he chooses, *may not abandon*, but he cannot, at his pleasure, harass the underwriter by saying that he will abandon, so as to turn that which, in its own nature, was only a partial, into a total loss.[2] And the assured cannot, when they have not abandoned in the first instance, afterwards bring their action for a total loss, on finding that the salvage and expenses exceed the value of the ship.[3]

The effect of an abandonment, when that is necessary, is to transfer all right and interest in the ship, cargo, or freight assured, or in what may be saved or recovered, to the underwriters, according to their respective interests. And, therefore, the underwriters are entitled, at their own cost, to take measures for realising or increasing the value of that, as well as to receive any compensation due to the assured, for the injury from which the loss has arisen.[4] So that when, for instance, a ship is abandoned, the owner becomes *trustee* for the underwriters on the ship *from the time of the loss*,[5] and must assign to them,—or rather, by the abandonment itself, there passes to them—all that remains of the subject assured, and all the benefit and advantage that follow it; and the underwriters become, by the abandonment, the legal owners, and, as such, are entitled, *from the time of the loss*, to all her after freight and profits, and are liable to all her future expenses and debts.[6] As, where freight was assured at and from the ship's port of loading to her port of discharge; and the vessel was cast on shore at an intermediate port, and part of her cargo was washed away; but the vessel was repaired, and took in other goods at that port to complete her cargo, and arrived and earned freight:—the assured had abandoned on receiving intelligence of the loss, and had agreed with the underwriters for her total loss:—it was held, that the freight thus earned, after deducting the expenses of earning, belonged to these underwriters.[7] And, when both ship and freight are assured in the same policy, there can be no question, on an abandonment and settlement for a total loss, to whom the freight to be earned belongs; but, when separate assurances are on the ship and on the freight, and abandonment is made to the respective underwriters,—the abandonment of the ship carries also the freight, *from the time of the loss*, to the underwriters on the ship, as an incident of the ship.[8] And, therefore, in a case where the ship and the freight were assured by separate policies, and the ship being captured,—the owners abandoned to the respective underwriters; but she was afterwards recaptured, arrived, and earned freight to them of the ship:—it was held, that, as the freight followed as an incident of the property in the ship, it was transferred to the underwriters on the ship by the abandonment.[9]

And, it has been finally decided, that the freight, which the ship is, at the time, in the course of earning, becomes the property of the under-

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[1] Roux *v.* Salvador, 3 Bing. 266.
[2] 2 Arn. 998.
[3] Martin *v.* Crokatt, 14 East, 465.
[4] Mai. 487; 1 Park, 374; 2 Arn. 1178.
[5] Cammell *v.* Sewell, 3 H. and N. 617.
[6] Stewart *v.* Greenock Marine Ins. Co., 2 H. of L. Cases, 159.
[7] Barclay *v.* Stirling, 5 M. and S. 6.
[8] 2 Arn. 1149.
[9] Case *v.* Davidson, 5 M. and S. 79; Affd. in Ex. Ch., 2 B. and B. 379.

writers paying for a total loss, who are entitled, on settling as for a total loss, to have the benefit of the freight that has been received by the shipowner on the discharge of the cargo; nor, when the freight has been thus earned, and actually paid to the assurers on the ship, can the owner, though he may have assured the freight separately, recover freight from the assurer on freight.[1]

If cargo or goods, though composed of separate and distinct commodities, have been assured in one policy for a slump sum, without apportioning that sum to these separate commodities, or to each separate portion thereof, and making the assurance, by a separate sum on each, a distinct and separate assurance upon each portion, as well as a joint assurance upon the whole,—the goods or cargo being "declared free from particular average," or, "free from average, unless general, or the ship be stranded,"—*the assurance is upon the whole cargo or goods*, though packed in separate packages, each capable of a distinct valuation, and, though some of the packages be totally lost, if the rest of the packages arrive safe, the loss is only a partial or average loss of the subject assured; and, when that is memorandum goods, and no general average or stranding has happened, the assurers are protected by the ordinary memorandum, and are not liable for a total loss of some of the packages.[2] And when the assured goods are declared to be, and had to be valued "on rice to be declared free from particular average," the assured cannot—by a declaration of interest afterwards endorsed on the policy and initialed by the underwriters, and by which a valuation is put upon each bag and upon the whole of the rice,—thereby make the assurance to be a separate assurance upon each bag.[3]

But if, during the voyage, the assured ship has been wrecked and abandoned to the underwriters on the ship, and this abandonment is accepted, and the cargo is forwarded to its destination in another ship hired by the captain for that purpose, and the freight is paid to the shipowner's agents on delivery of the cargo;—as, in so forwarding the cargo the captain acted as agent for his owners, and not for the underwriters—the latter have no claim to the freight thus received.[4]

If, after the underwriter has settled for a total loss, the ship or goods be recovered undamaged, the assured is not liable to repay the money he has thus received, but the underwriter stands in his place, and must take his proportion of the ship or goods saved, deducting the expense of salvage.[5]

IV.—DISPOSAL OF THE EFFECTS ABANDONED.

Until abandonment is properly made and accepted, the property of the ship or goods continues in the assured, and he is bound to use his utmost endeavour for the preservation and protection of what can be saved. By the policy, the underwriters agree to pay all charges attending the recovery and protection of the ship and goods, according to the amount of their respective subscriptions; and the captain is the agent both of the assured and the assurers, and of all others interested in the ship or cargo, in the case of a loss, to do whatever he thinks best for the interest of all concerned;

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1 Stewart, *ut supra*; Scottish Marine Ins. Co. *v.* Turner, 1 Macqueen's H. of L. Appeal Cases, 331.
2 Ralli *v.* Jansen, 6 El. and Bl. 422.
3 Entwistle *v.* Ellis, 2 H. and N. 549.
4 Hickie *v.* Rodocanachie, 4 H. and N. 455.
5 Da Costa *v.* Firth, 4 Burr. 1966.

and, if the assured neglect to abandon, he adopts the captain's acts, and is bound by them. And if, after a valid abandonment has been made, and the captain is necessarily continued, or is allowed by the assurers to continue, in the management of the wreck, he then becomes their agent, and they are bound by, and accountable for, his actings; and he, of course, becomes answerable to them for the value of the effects saved or recovered.[1]

When the vessel assured has been so much injured by perils of the sea as to be incapable of repair, or is in a place where she cannot be repaired, or can only be repaired at an expense exceeding her value when repaired, or at an expense which no prudent man, unassured, would expend, the captain may break up the vessel, and sell her *as a wreck*, for behoof of all concerned. As, where the vessel was so much injured by perils of the sea as not to be reparable at all, or not reparable unless at an expense exceeding her value,—or, where the vessel, after survey by the port-wardens and carpenters, was declared unfit for service;—in both cases it was held that, if the ship ceases to retain that character, and becomes a wreck, or cannot be repaired, unless at an expense which no prudent man, if unassured, would be at, the loss is total.[2]

And, when the vessel is in a place where the repairs cannot be done, or where the captain has no money to pay for them, and no means of raising money, and is in circumstances in which the owner, in the exercise of a prudent and sound judgment, could not doubt as to the course to be pursued, the captain, in such a case of necessity, is entitled to sell.[3]

When an abandonment of the ship has been accepted of, the underwriter becomes owner for the voyage, and, being entitled either to salvage or to freight, he is liable for the wages of the captain and crew.[4]

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[1] Mar. 497; 2 Arn. 1190.
[2] Cambridge *v.* Anderton, 2 B. and C. 691; Thompson *v.* Colvin, 1 L. and W. 140.
[3] Soames *v.* Sugrue, 4 C. and P. 474.
[4] Mar. 498; 2 Arn. 1182.

XII.—OF THE ADJUSTMENT OF LOSSES.

As the contract of assurance is merely a contract of indemnity, the assurer is only bound, according to the principle upon which that contract is entered into in this country, to place the assured, in the case of a loss, in the same situation as he was, before he undertook or engaged in the adventure; that is, the assurance should afford the assured an indemnity, and nothing more or less.[1]

The adjustment of a loss is, therefore, the ascertaining and settling what is the amount of indemnity the assured has to receive, after making the proper allowances and deductions; and, as sometimes points of considerable practical difficulty may arise, this is commonly done by persons conversant with this branch of business. When the damage has been ascertained and apportioned, the underwriter usually writes on the back of the policy, "This loss adjusted at (so much) per cent."

Under this head will be considered—1. How the damage is ascertained; 2. How it is estimated; and, 3. What is the effect of an adjustment.

I.—HOW THE DAMAGE IS ASCERTAINED.

As already mentioned, the general rule is, that assurance ought to afford indemnity to the assured from loss, and nothing more or less; but this loss may be either total or partial, and the policy may be a valued or an open one.

When a loss is *total* of the whole subject assured, the assured is entitled to recover, under a *valued* policy, the whole sum in the policy, on proving that there has been a total loss of the subject assured,—the valuation being held to be the agreed-on estimate of the subject assured, so as to supersede the necessity of proving the actual value, by specifying a certain sum as the amount of that value, which, in the case of goods, should be composed of the first cost, adding only the premium and commission, and, it may be, the probable profit. The amount in the policy will, therefore, be due, unless there has been fraud in the valuation; and, although a small excess would not be regarded, yet, on proof of fraud, the valued policy will be opened, and the assured can only recover according to his real interest.

In a loss under an *open* policy, the assured must prove, not only that the subject assured was put to risk, but also the value of that subject, for which, with the addition of all charges and premium, the underwriters are liable to the extent of the assurance.[2]

A *partial* loss is the damage which the ship, or cargo, may have sustained in the course of the voyage from any of the perils assured against, though the vessel, or the whole, or greater part of the cargo, arrive at the port of destination. In this case, there is no difference between an open and a valued policy; and proof must be made of the actual amount of the loss.[3]

If the goods assured arrive at the port of delivery in a damaged state, the quantity and extent of the damage, whether in an open or valued policy,

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[1] Mar. 499; 1 Park, 354. [2] Mar. 500; 1 Park, 221; 1 Arn. 320, 325.
[3] *Per* Lord Tenterden, in Allan *v.* Sugrue, 8 B. and C. 564.

is to be ascertained by comparing the gross amount or the sales of the damaged goods, with the gross amount of the market price, whether high or low, which the same goods would have brought at that port in a sound state; and the underwriter pays the same proportion of the original value of the goods, including all charges still on board, or of the value in a valued policy.[1]

If different parcels of goods be assured in the same policy, and if each be capable of a separate and distinct valuation, and each separate parcel is valued and assured accordingly, and a total loss of one entire parcel takes place, the underwriter, in a valued policy, pays a corresponding proportion of that value,—and, in an open policy, he pays the invoice price, with the addition of all charges, and of the premium of assurance.[2]

When, of goods assured in the same policy, part is lost, and part only damaged, the total loss of the former, and the damage or partial loss on the latter, may be either adjusted together or separately.[3]

II.—HOW THE DAMAGE IS ESTIMATED.

1. On the Ship.—The rule is, that the vessel is to be taken as of the value she was at the commencement of the voyage assured, including the value of the furniture, outfit, and provisions, money advanced to the seamen, and the premiums of assurance, and deducting one-third new for the old materials, after the ship's first voyage,[4] or if, in consequence of damage sustained during that voyage, she has been repaired.[5]

2. On the Cargo.—The loss must be estimated by taking the prime cost or invoice price of the goods, and adding to that all duties and expenses incurred until they are on board, with the premiums of assurance, without regard to the fluctuations, or rise or fall of markets, or the speculations of merchants.[6] And, if the goods are the owner's own manufacture, or have been brought from a distance, not being sold, to the port of shipping, they must be valued at the price they would have brought, either at the place of manufacture, or at the place from which they came; and that value, with the expenses, shipping charges, and premium of assurance, will be the measure of the loss. But under an assurance on goods, it has been held, that the assured were not entitled to recover two sums paid by their agent at the port of loading, for port-charges and other incidental expenses, as part of the value of the merchandise shipped at that port, and assured by the policy, inasmuch as the money agreed to be paid there was not properly freight, and had no distinct relation to the goods shipped.[7]

A partial loss, upon either ship or goods, is that proportion in the original value or prime cost which corresponds to the diminution in value occasioned by the damage sustained; and when there is a partial loss on the goods, the amount is that proportion which the price of the damaged bears to the price of the sound at the port of loading, used as a criterion to ascertain the proportion of the prime cost which the underwriter has to pay, including all charges still on board.[8] And, in this case, the *gross* and not the *net* proceeds of the sound and damaged goods are to be taken.[9]

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1 1 Arn. 306.
2 Mar. 508; 4 Park, 222; 2 Arn. 1038.
3 2 Arn. 972.
4 Mar. 633; 2 Arn. 978.
5 Pomgdestre *v.* Ro. Ex. Ass. Co., R. and M. 378; Pirie *v.* Steele, 8 C. and P. 200.
6 Mar. 502; 1 Park, 215; 2 Arn. 972.
7 Winter *v.* Haldimand, 3 B. and Ad. 649.
8 Mar. 504; 2 Arn. 967.
9 1 Park, 232, 2 Arn. 969.

Where the goods are damaged, and, on that account, or for other sufficient reason, have to be sold short of the port of delivery, the loss is the difference between the net proceeds of the goods (*i.e.*, after deducting charges) and the invoice-price at the port of lading, with the premium of assurance, but no commission.[1]

If the goods assured consist of various kinds, assured at a slump sum, and part is lost or destroyed by the perils of the sea, the whole value of the goods must be taken into account, and a proportion or percentage of that value taken, as the value of the goods lost or destroyed, and this percentage is the charge against the underwriter.[2] But, if the interest of the assured be less than the amount assured, the computation must, in the case of a partial loss, be made according to his real interest, as may be proved, the same as in an open policy, and not by the value in the policy.[3]

3. On the Freight.—The amount is the freight for which the ship is chartered and assured, and which she would have earned, but for some of the perils assured against; and that, though only part of the cargo has been on board, the rest being ready to ship, or although the vessel be lost on her way to her port of loading.[4] But, when the freight has not been contracted for, the loss must be calculated according to the freight of the goods actually on board at the time, whether the policy be open or valued.[5]

The shipowner is entitled to recover, as freight, the profit which he would have made by carrying his own goods in his own ship.[6] And, when the goods to be carried have been contracted for, and are ready to be shipped at a place seven miles distant, but the vessel, being ready to receive them, is lost by the perils assured against, the assured is entitled to recover the amount of freight.[7]

III.—THE EFFECT OF AN ADJUSTMENT.

The adjustment of a partial or average loss should take place at the port or place of the vessel's destination,—and a loss by a general average, as between the owner of the ship and the owner of the goods, as at the ship's port of destination or discharge.[8] And, therefore, when the loss is proved to have been settled according to the law of that country, though on a principle different from the British law, and though it was a British ship,—this settlement was held conclusive between the parties.[9] But, if it be not proved that the average loss was so settled according to the known law and the usage of that foreign country, the assured will not be entitled to recover the amount so paid under the policy of assurance.[10]

Commonly, the underwriter writes on the back of the policy, "Adjusted this loss at (so much) per cent.;" and after an endorsement has been thus made and signed by the underwriters, the assured does not require to go into a proof of the loss, the underwriters having thus expressly admitted that a loss was sustained to that amount.[11] But, if the adjustment has proceeded on any misconception in law or mistake in fact, or, if there has

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1 Arn. 973; Mar. 503.
2 1 Park, 233; 2 Arn. 972.
3 Mar. 641; 2 Arn. 971.
4 1 Park, 64; 2 Arn. 987.
5 Forbes *v.* Aspinall, 13 East, 323.
6 Flint *v.* Flemyng, 1 B. and Ad. 45.
7 De Vaux *v.* I'Anson, 5 Bing. *n. c.* 519.
8 2 Arn. 943.
9 Simmonds *v.* White, 2 B. and C. 803; Dalgleish *v.* Davidson, 5 D. and R. 6.
10 Power *v.* Whitmore, 4 M. and S. 141.
11 Mar. 510; 1 Park, 266.

not been a full disclosure of the whole circumstances, or, if there has been any fraud,—the underwriters are not thereby foreclosed, but the adjustment may be opened up, only, the burden of proving the misconception, mistake, concealment, or fraud, lies upon the underwriters.[1]

But this adjustment, thus made, is not final and conclusive as to the matters appearing to have been adjusted, and, notwithstanding the adjustment, the sum therein stated is merely "*an admission* by the underwriter, on the supposition of the truth of certain facts, that the assured are entitled to recover the amount adjusted on the policy," but, "*till he has paid the money* he is at liberty to avail himself (take the advantage) of any defence which the facts or the law of the case will furnish, *although he was actually aware of them when he signed the adjustment.*"[2] And, in conformity with this opinion, it has been held that the adjustment is only evidence of the amount of the damages sustained by the loss;[3] and, if this amount is adjusted between the agents of the assured and the broker of the underwriter, who, though he has in his hands sufficient funds of the underwriter, grants his credit note for the amount, to be paid in a month, and, after it is due, the broker becomes insolvent,—yet, the underwriter is not thereby discharged.[4]

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[1] Mar. 511, 513; 1 Park, 271; 2 Arn. 1204.
[2] *Per* Lord Ellenborough, in Herbert *v.* Champion, 1 Camp. 275.
[3] Luckie *v.* Bushby, 13 M. G. and S. 861; M'Farlane *v.* Giannacopulo, 3 H. and N. 860.

XIII.—RETURNS OF PREMIUM.

The underwriter receives the premium for running the risks in the policy, but, where the assurance is void,—or where the assurer runs no risk,—or where the consideration fails, or is not performed,—in such cases, the assured can recover back the premium or part of it.[1]

Return premiums are due—1. Where the risk has not begun; 2. Where the assurance is void for want of interest, for illegality, or fraud; or, 3. Where an event has happened on which it was agreed there should be a return.

I.—WHERE THE RISK HAS NOT BEGUN.

The general rule is, that as the underwriter receives the premium for running the risk, when that risk is never run, whether that be from the fault, will, or pleasure of the assured, or where the vessel does not sail on the voyage assured, or if the policy is void in consequence of the assured's non compliance with any of the warranties, express or implied, or from whatever cause, except fraud,—the premium must be returned, as the consideration for which it was paid has failed.[2]

But, if the risk is once commenced, there can be no return of premium, and it matters not how short a time the subject assured may have been at risk, if the vessel sail on the voyage assured, for however short a distance she may proceed, or though she should deviate next hour.[3] And when a vessel is assured "at and from" a certain place, and the policy once attaches *at*, there can be no return of premium.[4]

When the voyage consists of distinct parts, as of an outward and a homeward voyage, or, if the voyage be to several places, but there is one entire risk, for one entire premium,—there can be no apportionment or return of part of the premium, though the risk be put an end to before the commencement of some part or portion of the voyage assured.[5] And the same holds, in an assurance for time, *at one entire premium* for the whole undivided risk, though expressed at so much *per cent. per month*, in which case there can be no return, though the risk should be determined by an event happening immediately afterwards, and the voyage be entirely abandoned.[6]

If, however, the assurance is upon a voyage, divided or divisible, according to the usage of trade, into distinct parts or risks, to which the premium may be, and is, according to the same usage, apportioned; and, should one or more of these parts not be begun—the premium may be apportioned to these several risks, and a return made applicable to the risks not begun.[7]

II.—WHERE THE ASSURANCE IS VOID FOR WANT OF INTEREST, FOR ILLEGALITY, OR FOR FRAUD.

1. Want of Interest.—The general rule is, that, where the assurance has been made through mistake, misrepresentation, or any other innocent

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1 Mar. 515; 2 Park, 766; 2 Arn. 1210.
2 Mar. 527; 2 Park, 768; 2 Arn. 1211.
3 Mar. 530; 2 Park, 782; 2 Arn. 1215.
4 Annan *v.* Woodman, 3 Taunt. 299.
5 2 Park, 792; 2 Arn. 1215.
6 Mar. 530; 2 Park, 788; 2 Arn. 1216.
7 Mar. 530; 2 Park, 783; 2 Arn. 1217.

cause, while the assured has no interest whatever in the subject assured,—or, where it has been assured to a much greater amount than the value or interest of the assured,—there must be a return of premium in the former, and of a rateable proportion in the latter case.[1] And, whether there is one policy or more upon the same subject, if it is assured beyond its real value, the assured is entitled to a rateable return of premium, corresponding to the sum assured above the real value or interest of the party assured; the several policies, where more than one has been effected, being held as only one assurance, and each underwriter being bound to make a return of premium, in proportion to the sum underwritten by him, without regard to the priority of dates, unless the over-assurance be made by the last-dated policies.[2] Thus, an assurance was effected on 12th April, on a cargo of cotton then at sea, by five several policies, at the rate of fifty guineas per cent.; and, on 13th April, news of the vessel's safety having arrived, a further assurance was *bonâ fide* effected by six different policies, at ten and five guineas per cent.: the latter assurance, added to the former, exceeded in amount the value of the subject-matter assured, but the former of itself did not:—it was held, that the assured were entitled to a return of premium on the amount of the over-assurance, to which return the underwriters who subscribed the policies *on 13th April* were to contribute rateably, in proportion to the sums assured by them respectively,—the amount of the over-assurance being ascertained by taking into account *all the policies;* but no return was due in respect of the policies effected on the 12th.[3]

A wagering or gaming policy, being illegal and void, the assured is not entitled to recover the premium when he waits till the risk be run.[4] But, if risk has not been run, whether that has been owing to the fault or will of the assured, or to any other cause, the premium has to be returned; yet, if the risk has been once commenced, and the assurer might, at any time, have been called on to pay the sum assured, there can be no return of premium; and this holds, though the sum in the policy may be twice the value of the effects assured, or although the assured may, at effecting the assurance, have had only a contingent assurable interest, which eventually turns out to be nothing.[5]

2. Upon Illegal Trading.—If the trade assured be illegal, the policy is void, and there is no return of premium; and, as all commerce with an enemy of the state is illegal, an assurance upon such a trading is illegal, and the assured cannot recover back the premium. And, when the risk is illegal,—as on goods, the importation of which into this country is absolutely prohibited,—or on ships or goods in smuggling adventures,—no return of premium can be demanded.[6] But, should the agent of the assured assure his principal's goods in this country, and should the assured become an alien enemy before the policy was subscribed, but without any knowledge, or possibility of the agents knowing,—though the policy is void, the agent, in whom there was no fraud or illegality, can recover the premium.[7] And, when a British licence was necessary to legalise a voyage

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[1] Mar. 516; 2 Arn. 1224.
[2] Mar. 516; 2 Arn. 296, 1228.
[3] Fisk *v.* Masterman, 8 M. and W. 165.
[4] Mar. 516; 2 Arn. 1218
[5] Mar. 518; 2 Park, 782; 2 Arn. 1215.
[6] Mar. 520; 2 Arn. 1221.
[7] Oom *v.* Bruce, 12 East, 225.

from a hostile country, to this, and orders had been given, *before* the vessel sailed to effect an assurance and obtain this licence, but which, without the fault or knowledge of the assured, had not been procured until *after* the vessel had sailed, and the vessel was lost,—the assured was entitled to recover back the premium.[1]

3. FRAUD ON ONE SIDE OR OTHER.—If there has been actual fraud on the part of the assured, whether that fraud has been committed by himself or his agent, the underwriter retains the premium: but, if the underwriter has been guilty of fraud, the assured is entitled to recover the premium.[2] But, when a policy is voided by concealment, or by misrepresentation, *not fraudulent*, the assured is entitled to a return of premium, and the policy is held to be conclusive evidence of the receipt of the premium by the assurer.[3]

III.—WHERE AN EVENT HAS HAPPENED ON WHICH IT WAS AGREED THERE SHOULD BE A RETURN.

In the policy, the underwriter sometimes engages to return a certain proportion of the premium if a specified event takes place, or an agreed-on condition be complied with; and, when the return is to be made if the ship arrive, this word "arrive" relates only to the arrival of the ship, and not to the arrival of the *goods* on board, &c., although the assurance should be on the goods alone, and the assured is entitled to a return of premium if the vessel arrive safe, notwithstanding of the goods being wholly or partially lost, or sea damaged;[4] and, should different parts of the premium be to be returned, if the ship sail on different portions of the voyage, and *arrive*, this means the ship's arrival at her chosen ultimate port of destination, and not at any intermediate stage of the voyage.[5] For instance, goods were assured to any ports or places in the Baltic, backwards and forwards, &c., until the captain can find a port, "to continue till the goods were *there* discharged and safely landed," and warranted to be free from capture or seizure in the ship's port or ports of discharge,—at a premium of fourteen guineas, *to return seven per cent. for arrival.* The ship arrived at Pilau, and anchored in the roads, about two miles farther out than ships usually lie to unload; and the captain went ashore to report, and obtain permission to discharge, and he returned with a pilot and Prussian soldiers, who discharged part of the cargo into a lighter, and then took the ship with the rest into the harbour, and the cargo was confiscated:—it was held, that, by the ship's arrival at the captain's selected port of discharge, the underwriters were released from liability for the subsequent loss, but the assured was entitled to the agreed-for return of premium.[6]

If it is a condition of the policy that a part of the premium is to be returned on a certain event taking place, or on a certain circumstance having happened, the assured has to prove the event to have taken place, or the circumstance to have happened, so as to entitle him to a return of premium. Thus, in a policy of assurance on a ship for a year, the under-

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1 Hentig *v.* Staniforth, 5 M. and S. 122.
2 Mar. 522; 2 Arn. 1222.
3 Anderson *v.* Thornton, 8 W. H. G. 425.
4 Mar. 535; 2 Arn. 1231.
5 Kellner *v.* Le Mesurier, 4 East, 396.
6 Dalgleish *v.* Brooke, 15 East, 295.

writer agreed to return a part of the premium, "*if sold or laid up*, for every uncommenced month;"—the ship was laid up for several months during that year, but was employed again within that same year:—it was held, that the words "laying up," meant a laying up for the season, without being employed for the current year, and that the laying up which had taken place was not such a laying up as to entitle the assured to a return of premium.[1]

[1] Hunter *v.* Wright, 10 B. and C. 714.

APPENDIX.

APPENDIX.

APPENDIX No. I.

THE MERCHANT SHIPPING ACT, 1854.

17° AND 18° VICTORIÆ, CAP. 104.

AN ACT TO AMEND AND CONSOLIDATE THE ACTS RELATING TO MERCHANT SHIPPING. [10TH AUGUST 1854.]

ARRANGEMENT OF CLAUSES.

PRELIMINARY.

Preamble.
1. Short Title of Act.
2 Interpretation of certain Terms in this Act.
3. Commencement of Act
4. Exemption of Her Majesty's Ships.
5 Division of Act.

PART I

THE BOARD OF TRADE: ITS GENERAL FUNCTIONS.

6. Board of Trade to be Department to superintend Merchant Shipping.
7. Certificates and Documents purporting to be sealed or signed in a given Manner.
8. Board of Trade to issue Forms of Instruments
9. Certain Forms and Instruments to be exempt from Stamp Duty.
10. Penalties for Forgery of Seal and fraudulent Alteration of Forms, and for not using Forms issued by the Board.
11. Application of Moneys and Fines paid to Board of Trade.
12. Returns to Board of Trade.

13. Officers of Board of Trade, Naval Officers, Consuls, the Registrar-General of Seamen, Officers of Customs, and Shipping-Masters may inspect Documents and muster Crews.
14. Board of Trade may appoint Inspectors.
15. Powers of Inspectors; Witnesses to be allowed Expenses; Penalty for refusing to give Evidence.
16. Penalty for obstructing Inspectors in the Execution of their Duty.

PART II.

BRITISH SHIPS: THEIR OWNERSHIP, MEASUREMENT, AND REGISTRY.

APPLICATION.

17. Application of Part II. of Act.

DESCRIPTION AND OWNERSHIP OF BRITISH SHIPS.

18. Description and Ownership of British Ships.
19. British Ships, with certain Exceptions, must be registered.

MEASUREMENT OF TONNAGE.

20. Tonnage Deck; Feet; Decimals.
21. Rule I. For Ships to be registered, and other Ships of which the Hold is clear.
22. Rule II. For Ships not requiring Registry or with Cargo on board.
23. Allowance for Engine Room in Steamers. To be rateable in ordinary Steamers. May be measured where the Space is unusually large or small. Mode of Measurement.
24. Open Ships, how measured.
25. Tonnage and Number of Certificate to be carved on Main Beam (*repealed*).
26. Tonnage, when once ascertained, to be ever after deemed the Tonnage.
27. Re-measurement of Ships already registered may be made, but not to be compulsory.
28. Power to re-measure Engine Rooms improperly extended.
29. Officers may be appointed and Regulations made for Measurement of Ships.

REGISTRY OF BRITISH SHIPS.

30. Registrars of British Ships.
31. Substitution of Governor abroad for Commissioners of Customs, and of Consul for Justice.
32. Registrar to keep Register Books.
33. Port of Registry of British Ship.
34. Name of Ship (*repealed*).
35. Application for Registry, by whom to be made.
36. Survey of Ship.
37. Rules as to Entries in Register Book.
38. Declaration of Ownership by Individual Owner.
39. Declaration of Ownership by Body Corporate.
40. Evidence to be produced on Registry.
41. Penalty on Builder for false Certificate.
42. Particulars of Entry in Register Book.
43. No Notice taken of Trusts.

CERTIFICATE OF REGISTRY.

44. Certificate of Registry to be granted.
45. Change of Owners to be endorsed on Certificate of Registry.
46. Change of Master to be endorsed on Certificate of Registry.
47. Power to grant new Certificate.
48. Provision in case of Loss, &c., of Certificate.
49. Provisional Certificate.
50. Custody of Certificate; Delivery of Certificate may be required; Penalty for Detention.
51. Mode of proceeding if detaining Party abscond.

52. Penalty for using improper Certificate.
53. Certificate of Ship lost or ceasing to be British to be delivered up.
54. Provisional Certificate for Ship becoming vested in British Owners at Foreign Port.

TRANSFERS AND TRANSMISSIONS.

55. Transfer of Ships or Shares therein.
56. Declaration to be made by Transferee.
57. Registration of Transfer.
58. Transmission of Shares by Death, Bankruptcy, or Marriage.
59. Proof of Transmission by Bankruptcy, Marriage, Will, or on Intestacy.
60. Registration of transmitted Share.
61. Registrar to retain certain Evidence.
62. Unqualified Owner entitled by Transmission may apply to Court for Sale of Ship.
63. Order to be made by Court.
64. Limit of Time for Application.
65. Power of Courts to prohibit Transfers.

MORTGAGES.

66. Mortgage of Ships and Shares therein.
67. Mortgages to be registered in Order of Time of Production.
68. Entry of Discharge of Mortgages.
69. Priority of Mortgages.
70. Mortgagee not to be deemed Owner.
71. Mortgagee to have power of Sale.
72. Rights of Mortgage not affected by any Act of Bankruptcy of Mortgager.
73. Transfer of Mortgages.
74. Transmission of Interest of Mortgages by Death, Bankruptcy, or Marriage.
75. Entry of transmitted Mortgage.

CERTIFICATES OF MORTGAGE AND SALE.

76. Powers of Mortgage and Sale may be conferred by Certificate.
77. Requisites for Certificates of Mortgage and Sale.
78. Restrictions on Certicates of Mortgage and Sale.
79. Forms of Certificates of Mortgage and Sale.
80. Rules as to Certificates of Mortgage.
81. Rules as to Certificates of Sale.
82. Power of Commissioners of Customs in case of Loss of Certificate of Mortgage or Sale.
83. Revocation of Certificates of Mortgage and Sale.

REGISTRY ANEW AND TRANSFER OF REGISTRY.

84. Alteration in Ship to be registered.
85. On Alteration Registry anew may be required.
86. Grant of Provisional Certificate in respect of Alteration.
87. Consequence of Omission to register anew.
88. On Change of Owners, Registry anew may be granted, if required.
89. Registry may be transferred from Port to Port.
90. Manner of Transfer of Registry.
91. Transfer of Registry not to affect Rights of Owners.

REGISTRY, MISCELLANEOUS.

92. Inspection of Register Books.
93. Indemnity to Registrar.
94. Return to be made by Registrars to Commissioners of Customs.
95. Application of Fees.
96. Commissioners of Customs to provide, and, with Consent of Board of Trade, may alter Forms and issue Instructions.
97. Power to Registrar to dispense with Declarations and other Evidence.
98. Power for Commissioners or Governor in special Cases to grant a Pass to a Ship not registered.
99. Provision for Cases of Infancy or other Incapacity.
100. Liabilities of Owners.

FORGERY.

101. Punishment for Forgery.

NATIONAL CHARACTER.

102. National Character of Ship to be declared before Clearance.
103. Penalties: for unduly assuming a British Character; for Concealment of British or Assumption of Foreign Character; for acquiring Ownership if unqualified; for false Declaration of ownership.
104. Officer not liable for any Seizure made on reasonable Grounds.
105. Penalty for carrying improper Colours.
106. Effect of Declaration in the Act that a Ship shall not be recognised as a British Ship.

EVIDENCE.

107. Copies of Registers and Declarations to be admissible in Evidence, and to be *primâ facie* Proof of certain Things.

SAVING CLAUSE.

108. Saving of 3 and 4 Vict., cap. 56, relating to East Indian Ships.

PART III.

MASTERS AND SEAMEN.

APPLICATION.

109. Application of Part III. of Act.

LOCAL MARINE BOARDS.

110. Constitution of Local Marine Boards.
111. Qualification of Voters for Members of Local Marine Boards.
112. Lists of such Voters to be made.
113. Revision of List of Voters.
114. Registers to be produced.
115. Expenses to be paid by Board of Trade.
116. Persons on Revised Lists qualified to vote.
117. Qualification of Members of Local Marine Boards.
118. Error in Elections not to vitiate Acts done.
119. Minutes and Business of Local Marine Boards.
120. If any Local Marine Board fails to discharge its Duties, Board of Trade may assume its Duties, or direct a new Election.
121. Board of Trade, on Complaint, may alter Arrangements made by Local Marine Boards.

SHIPPING OFFICES.

122. Local Marine Board to establish Shipping Offices.
123. Board of Trade to have partial Control over Shipping Offices.
124. Business of such Offices generally.
125. Fees to be paid upon Engagements and Discharges.
126. Masters to pay Fees, and to deduct Part from Wages, Proviso as to Excess.
127. Penalty on Shipping Masters taking other Remuneration.
128. Business of Shipping Offices may be transacted at Custom-houses.
129. In London Sailors' Homes may be Shipping Offices.
130. Dispensation with Shipping-Master's Superintendence.

EXAMINATIONS AND CERTIFICATES OF MASTERS AND MATES.

131. Examinations to be instituted for Masters and Mates.
132. Powers of Board of Trade over Examinations.

133. Fees to be paid by Applicants for Examination.
134. Certificates of Competency to be granted to those who pass.
135. Certificates of Service to be delivered to Persons who served as Masters or Mates before 1851, and to certain Naval Officers; and Certificates of Service for Home-Trade Passenger-Ships to be delivered to Persons who have served as Masters or Mates in such Ships before the 1st January 1854.
136. No Foreign-going Ship or Home-Trade Passenger-Ship to proceed to Sea without Certificates of the Master and Mates.
137. Certificates for Foreign-going Ships available for Home-Trade Passenger-Ships.
138. The Registrar to record Grants, Cancellations, &c., of Certificates; Duplicates and Entries to be Evidence.
139. In case of Loss a Copy to be granted.
140. Penalties for false Representations; for forging, or altering, or fraudulently using or lending any Certificate.

APPRENTICESHIPS TO THE SEA-SERVICE.

141. Shipping-Masters to assist in binding Apprentices, and may receive Fees.
142. Indentures of Boys bound Apprentices to Sea-Service by Guardians or Overseers to be witnessed by Two Justices.
143. Indentures of Apprenticeship to be exempt from Stamp Duty, and recorded.
144. Rules to govern Apprenticeship of Paupers in Great Britain and Ireland, respectively.
145. Apprentices and their Indentures to be brought before Shipping-Master before each Voyage in a Foreign-going Ship.

ENGAGEMENT OF SEAMEN.

146. Board of Trade may license Persons to procure Seamen.
147. Penalties: for supplying Seamen without Licence; for employing unlicensed Persons; for receiving Seamen illegally supplied.
148. Penalty for receiving Remuneration from Seamen for Shipping them.
149. Agreements to be made with Seamen, containing certain Particulars; Proviso as to Forms for Colonial Ships.
150. For Foreign-going Ships such Agreements, when made in the United Kingdom, except in special Cases, to be made before and attested by a Shipping-Master; to be in Duplicate; Provision for Substitutes.
151. Foreign-going Ships making short Voyages may have running Agreements.
152. Engagement and Discharge of Seamen in the meantime.
153. Duplicates of running Agreements how to be dealt with.
154. Fees to be paid on such running Agreements.
155. In Home-Trade Ships Agreement to be entered into before a Shipping-Master or other Witness.
156. Special Agreements for Home-Trade Ships belonging to same Owners.
157. Penalty for shipping Seamen without Agreement duly executed.
158. Changes in Crew to be reported.
159. Seamen engaged in the Colonies to be shipped before some Shipping-Master or Officer of Customs.
160. Seamen engaged in Foreign Ports to be shipped with the Sanction and in the Presence of the Consul.
161. Rules as to Production of Agreements and Certificates of Masters and Mates of Foreign-going Ships.
162. Rules as to Production of Agreements and Certificates for Home-Trade Ships.
163. Alterations to be void unless attested to have been made with the Consent of all Parties.
164. Penalty for falsifying Agreement.
165. Seamen not to be bound to produce any Agreement.
166. Copy of Agreement to be made accessible to Crew.
167 Seamen discharged before Voyage to have Compensation.

ALLOTMENT OF WAGES.

168. Regulations as to Allotment Notes.
169. Allotment Notes may be sued on summarily by certain Persons and under certain Conditions.

DISCHARGE AND PAYMENT OF WAGES.

170. Discharge from Foreign-going Ships to be made before Shipping-Master.
171. Master to deliver Account of Wages.

172. On Discharge, Masters to give Seamen Certificates of Discharge, and return Certificates of Competency or Service to Mates.
173. Shipping-Master may decide Questions which Parties refer to him.
174. Masters and others to produce Papers to Shipping-Masters, and give Evidence.
175. Settlement of Wages: Release to be signed before and attested by the Shipping-Master; to be Discharge; and to be Evidence; and no other Receipt to be a Discharge. Voucher to be given to Master, and to be Evidence.
176. Master to make Reports of Character.

REMITTANCE OF WAGES, AND SAVINGS BANKS FOR SEAMEN.

177. Facilities may be given for remitting Seamen's Wages.
178. Power to pay when Order is lost.
179. Penalty for issuing Money-Orders with fraudulent Intent.
180. Savings Banks for Seamen may be established.

LEGAL RIGHTS TO WAGES.

181. Right to Wages and Provisions, when to begin.
182. Seamen not to give up certain Rights.
183. Wages not to be dependent on the earning of Freight.
184. In case of Death such Wages to be paid as after mentioned
185. Rights to Wages in case of Termination of Service by Wreck or Illness.
186. Wages not to accrue during Refusal to work or Imprisonment.
187. Period within which Wages are to be paid.

MODE OF RECOVERING WAGES.

188. Seamen may sue for Wages in a summary Manner.
189. Restrictions on Suits for Wages in Superior Courts.
190. No Seaman to sue for Wages abroad, except in Cases of Discharge or of Danger to Life.
191. Master to have same Remedies for Wages as Seamen.

RELIEF TO SEAMEN'S FAMILIES OUT OF POOR-RATES.

192. Relief to Seamen's Families to be chargeable on a certain Portion of their Wages.
193. Notice to be given to Owner, and Charge to be enforced on the Return of the Seaman.

WAGES AND EFFECTS OF DECEASED SEAMEN.

194. Masters to take charge of or sell Effects of deceased Seamen which are on board, and enter the same and Wages due in the Official Log.
195. Such Effects and Wages to be paid either to Consul or to Shipping-Master with full Accounts.
196. Penalties for not taking charge of, remitting, or accounting for such Moneys and Effects.
197. Officers of Customs and Consuls to take charge of Effects left by Seamen abroad, and to remit the same and their Wages to Board of Trade.
198. Wages and Effects of Seamen dying at home to be paid in certain Cases to Board of Trade.
199. If Wages and Property of deceased Seamen less than £50, they may be paid over without Probate or Administration to the Persons entitled.
200. Mode of Payment under Wills made by Seamen.
201. Provision for Payment of just Claims by Creditors, and for preventing fraudulent Claims.
202. Mode of dealing with unclaimed Wages of deceased Seamen.
203. Punishment for Forgery and false Representations in order to obtain Wages and Property of deceased Seamen.
204. Effects of Seamen discharged from Navy to be disposed of by Accountant-General of Navy.

LEAVING SEAMEN ABROAD.

205. On Discharge of Seamen abroad, by Sale of Ship or otherwise, Certificates of Discharge to be given, and Seamen to be sent home at Expense of Owner.
206. Forcing Seamen on shore a Misdemeanour.
207. No Seaman to be discharged or left abroad without Certificate of some Functionary.
208. Proof of such Certificate to be upon the Master.
209. Wages to be paid when Seamen are left behind on ground of Inability.

210. Such Wages to be treated as Money due to the Seamen, subject to Payment of Expense of their Subsistence and Passage home.
211. Distressed Seamen found abroad may be relieved and sent home at the public Expense.
212. Masters of British Ships compelled to take them.
213. Power to sue for the amount advanced for the relief of Seamen left abroad.

VOLUNTEERING INTO THE NAVY.

214. Seamen allowed to leave their Ships in order to enter the Navy.
215. Clothes to be delivered at once; Wages to be given to the Queen's Officer on account of the Seamen.
216. Repayment to Owner of Advance paid and not duly earned.
217. If new Seamen are engaged instead of the original Seamen, the owner may apply for Repayment of any extra expense he has been put to.
218. Application, how to be decided on, and amount of Repayment how to be ascertained.
219. Accountant-General to pay Sums when ascertained.
220. Penalty for Forgery and False Representations in support of such Applications.

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221. Survey of Provisions and Water on Complaint made.
222. Forfeiture for frivolous Complaint.
223. Allowance for short or bad Provisions.
224. Medicines, Lime or Lemon Juice, Sugar and Vinegar, to be provided and kept on board certain Ships (*repealed*).
225. Masters to keep Weights and Measures on Board.
226. Board of Trade and Local Boards may appoint Inspectors of Medicines, who are to see that Ships are properly provided.
227. Penalty for selling bad drugs for Ships (*repealed*).
228. Expense of Medical Attendance and Subsistence in case of Illness, and of Burial in case of Death, how to be defrayed.
229. Expenses, if paid by Consul, to be recoverable from Owner.
230. Certain Ships to carry Medical Practitioners; Penalty.
231. Place appropriated to Seamen to have a certain Space for each Man, and to be properly constructed and kept clear (*repealed*).

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232. Seamen to be allowed to go ashore to make Complaint to a Justice.

PROTECTION OF SEAMEN FROM IMPOSITION.

233. Sale of and Charge upon Wages to be invalid.
234. No Debt exceeding 5s. recoverable till End of Voyage.
235. Penalty for overcharges by Lodging-house Keepers.
236. Penalty for detaining Seamen's Effects.
237. Persons not to go on board before the final Arrival of Ship without Permission.
238. Penalty for Solicitations by Lodging-house Keepers.

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239. Misconduct endangering Ship or Life or Limb a Misdemeanour.
240. Power of Admiralty Courts to remove Master.
241. Power to investigate Cases of alleged Incompetency and Misconduct.
242. Board of Trade may cancel or suspend Certificates in certain Cases.
243. Offences of Seamen and Apprentices and their Punishments:—Desertion; neglecting or refusing to join or to proceed to Sea; Absence within twenty-four Hours before sailing, and Absence without Leave; quitting without Leave before Ship is secured; Act of Disobedience; continued Disobedience; Assault on Officers; combining to disobey; wilful Damage and Embezzlement; Act of Smuggling; causing Loss to Owner.
244. Entry of Offences to be made in Official Log, and to be read over or a Copy given to the Offender, and his Reply, if any, to be also entered.
245. Seamen whom Masters of Ships are compelled to convey, and Persons going in Ships without Leave, to be subject to Penalties for Breach of Discipline.
246. Master or Owner may apprehend Deserters without Warrant.
247. Deserters may be sent on board in lieu of being imprisoned.

248. Seamen imprisoned for Desertion or Breach of Discipline, may be sent on board before the Termination of the Sentence.
249. Entries and Certificates of Desertion abroad to be copied, sent home, and admitted in evidence.
250. Facilities for proving Desertion, so far as concerns Forfeiture of Wages.
251. Costs of procuring Imprisonment may to the extent of £3 be deducted from Wages.
252. Amount of Forfeiture, how to be ascertained when Seamen contract for the Voyage.
253. Application of Forfeitures.
254. Questions of Forfeitures may be decided in Suits for Wages.
255. Penalty for false Statement as to last Ship or Name.
256. Fines to be deducted from Wages, and paid to Shipping-Master.
257. Penalty for enticing to desert, and harbouring Deserters.
258. Penalty for obtaining Passage surreptitiously.
259. On Change of Masters, Documents hereby required to be handed over to Successor.

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260. Naval Courts may be summoned for hearing Complaints, and inquiring into Wrecks on the High Seas or abroad.
261. Constitution of such Courts.
262. General Functions and Mode of Action of such Courts.
263. Powers of such Courts: to supersede the Master; to discharge a Seaman; to forfeit Wages; to decide Disputes as to Wages, Fines, and Forfeitures; to direct Costs of Imprisonment to be paid out of Wages; to send home Offenders for Trial; to order Payment of Costs and Compensation.
264. Orders to be entered in Official Log.
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266. Penalty for preventing Complaint or obstructing Investigation.

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267. Offences committed by British Seamen at Sea or in Foreign Ports to be within Admiralty Jurisdiction.
268. Conveyance of Offenders to United Kingdom or some British Possession to be tried with the necessary Witnesses.
269. Inquiry into Cause of Death during Voyage.
270. Depositions to be received in Evidence when the Witness cannot be produced.

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271. Establishment of Register Office.
272. Register of Seamen to be kept.
273. Lists to be made for all Ships, containing certain Particulars.
274. Lists for Foreign-going Ships to be delivered to Shipping-Master on Arrival.
275. Lists to be delivered by Home-Trade Ships half-yearly.
276. Lists to be sent home in case of Transfer of Ship and in case of Loss.
277. Shipping-Masters and other Officers to transmit Documents to Registrar; Registrar to permit Inspection, to produce Originals, and give Copies.
278. Officers of Customs to make Returns of Ships to Registrar.
279. Agreements, Indentures, and Assignments, on Arrival at a Foreign Port to be deposited with the Consul, and in a Colony with the Officers of Customs.

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280. Official Logs to be kept in Forms sanctioned by Board of Trade.
281. Entries to be made in due Time.
282. Entries required in Official Log: Convictions; Offences; Punishments; Conduct and Character of Crew; Illnesses and Injuries; Deaths; Births; Marriages; quitting Ship; Wages of Men entering Navy; Wages of deceased Seamen; Sale of deceased Men's Effects; Collisions
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286. Official Logs to be delivered to Shipping-Master.
287. Official Logs to be sent home in case of Transfer of Ship and in case of Loss.

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293. Penalties on Masters and Owners, &c., neglecting to provide Boats and Life-Buoys.
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295. Regulations as to Lights and Fog-Signals (*repealed*).
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297. Rule for Steamers in narrow Channels (*repealed*).
298. If Collision ensues from Breach of the above Rule, Owner not to be entitled to recover (*repealed*).
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301. Equipment of Steam-Ships. Safety-Valve. Compasses to be adjusted. Fire Hose. Signals. Shelter for Deck-Passengers (*partly repealed*).
302. Penalty for improper Weight on Safety-Valve.

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304. Passenger Steamer to be surveyed.
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309. Owners to have Surveys made by Shipwright and Engineer Surveyors, and Surveyors to give Declarations containing certain Particulars.
310. Transmission of Declarations to Board of Trade. Penalty for Delay.
311. Times for Surveys and Transmission of Declarations.
312. Board of Trade to issue Certificates.
313. Manner of issuing and Transmitting Certificates.
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321. Surveyors to make Returns of the Build and other particulars of Steam-Ships, and Owners and Masters to give Information for that Purpose.

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332. Power of Pilotage Authorities to make and extend Exemptions from compulsory Pilotage.
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341. Renewal of Pilotage Certificate.
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343. Fees to be paid upon such Certificates and the Renewals thereof.
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347. Qualified Pilot to display Flag, though not in Pilot Boat.
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353. Compulsory Pilotage, in what Mode to be enforced.
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364. Power for Consignees to retain Pilotage Dues paid by them.

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365. Penalties on qualified Pilot exercising certain Trades and committing certain Offences: offending against Revenue; guilty of corrupt Practices; lending Licence; acting when suspended; acting when drunk; unnecessarily causing Expense; declining to go off; unnecessarily cutting or slipping Cable; refusing to conduct Ship into Port; quitting Ship.
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371. Publication of Notice of Licences of Pilots by Trinity House.
372. Bonds to be given.
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374. Continuance and Renewal of Licences.
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378. Ship coming past Dungeness, not having Pilot on board, to take the first qualified Pilot who offers; Penalty on Masters failing to display usual signal for Pilot.
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409. Sanction of Board of Trade, how to be obtained.
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442. Powers of Receiver to procure Assistance.
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444. Power of Receiver to suppress Plunder and Disorder by Force.
445. Certain Officers to exercise Powers of Receiver in his Absence.
446. Power in case of a Ship being in Distress to pass over adjoining Lands with Carriages.
447. Penalty on owners and Occupiers of Land refusing to allow Persons and Carriages to pass over their Land.
448. Power of Receiver to take Examination with respect to Ships in Distress.
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452. Notice of Wreck to be given by Receiver for the Purpose of informing Owners.
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454. In Cases where any Lord of the Manor or other Person is entitled to unclaimed Wreck, Receiver to give Notice to him.
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456. Disputes as to Sums payable to Receiver to be determined by Board of Trade.
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463. Justices may call for Documents and administer Oaths.
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476. High Court of Admiralty may decide on all Salvage Cases, whether on Sea or Land.

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478. Penalty for Plundering, in Cases of Shipwreck, for obstructing the saving of Shipwrecked Property, and for secreting the same.
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481. Manner of obtaining Permit to cut up Cables.
482. Permit to be advertised before Dealer proceeds to act thereon.
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484. No Claim for Salvage Services to be allowed in respect of Loss or Risk of Her Majesty's Ships or Property.
485. Claims for Salvage by Her Majesty's Officers not to be determined without Consent of Admiralty.
486. Steps to be taken when Salvage Services have been rendered by Her Majesty's Ships abroad.
487. Consular Officer or Judge to fix Amount, for which a bond is to be given.
488. On Master executing Bond, the Right of Detention to cease.
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491. Whom the Bond shall bind.
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493. Power of High Court of Admiralty to enforce Bonds.
494. Saving Clause.

495. Documents free from Duty.
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499. Foreign Goods found derelict, &c., to be subject to the same Duties as on Importation.
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502. Application of Part IX. of Act.

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507. In Case of Loss of Life or personal Injury, Board of Trade may direct Proceedings.
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509. Provisions for Conduct of Proceedings.
510. Rules as to Damages, and Applications thereof.
511. Any Person who is dissatisfied with the Amount of Statutory Damages may bring an Action on his own Account.
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513. Proceedings by Board of Trade after Refusal.
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516. Saving Clause.

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518. Punishment of Offences and Recovery of Penalties.
519. Stipendiary Magistrate to have same Power as Two Justices.

520. Offence, where deemed to have been committed.
521. Jurisdiction over Ships lying off the Coast.
522. Service to be good if made personally, or on board Ship, &c.
523. Sums ordered to be paid leviable by Distress on Ship.
524. Application of Penalties.
525. Limitation of Time in Summary Proceedings.
526. Document proved without calling attesting Witness.
527. Power of Judge of Court of Record or Admiralty to arrest Foreign Ship that has occasioned Damage.
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530. Offences punishable as Misdemeanours.
531. Summary Proceedings.
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533. Mode of requiring Appearance of Defender and Witnesses.
534. Backing Arrestments.
535. Compelling Attendance of Witnesses.
536. Proceedings to be *vivâ voce*.
537. Power to adjourn.
538. Sentence to be in Writing; Imprisonment to be inflicted in default of Payment.
539. Sentence and Penalties, &c., in default of Defender's Appearance.
540. Warrant to apprehend in default of Appearance.
541. Backing Sentences or Decrees.
542. Orders not to be quashed for Want of Form, and to be final.
543. General Rules, so far as applicable, to extend to Penalties and Proceedings in Scotland.

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545. Act not to affect Passenger Acts.
546. Corporations, &c., may grant Sites for Sailors' Homes.
547. Power of Colonial Legislatures to alter Provisions of Act.
548. Expenses incurred by Commissioners of Customs to be paid out of the Consolidated Customs.

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Form A.—Certificate of Surveyor.
Form B.—Declaration of Ownership by Individual Owner.
Form C.—Declaration of Ownership on behalf of a Body Corporate as Owner.
Form D.—Certificate of Registry.
Form E.—Bill of Sale.
Form F.—Declaration of Ownership by Individual Transferee.
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Form H.—Declaration by Owner taking by Transmission.
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Interpretation of certain Terms in this Act.

1. This Act may be cited for all purposes as "The Merchant Shipping Act, 1854."

2. In the construction and for the purposes of this Act (if not inconsistent with the context or subject-matter) the following terms shall have the respective meanings hereinafter assigned to them; that is to say,

"Her Majesty's dominions" shall mean Her Majesty's dominions strictly so called, and all territories under the government of the *East India* Company, and all other territories (if any) governed by any charter or licence from the Crown or Parliament of the United Kingdom.

"The United Kingdom" shall mean *Great Britain* and *Ireland.*

"*British* Possession" shall mean any colony, plantation, island, territory, or settlement within Her Majesty's dominions, and not within the "United Kingdom."

"The Treasury" shall mean the Commissioners of Her Majesty's Treasury.

"The Admiralty" shall mean the Lord High Admiral or the Commissioners for executing his office.

"The Board of Trade" shall mean the Lords of the Committee of Privy Council appointed for the consideration of matters relating to trade and foreign plantations.

"The *Trinity House*" shall mean the master, wardens, and assistants of the Guild, Fraternity, or Brotherhood of the most Glorious and Undivided *Trinity* and of *St. Clement* in the Parish of *Deptford Strond* in the County of *Kent*, commonly called the Corporation of the *Trinity House of Deptford Strond.*

"The Port of *Dublin* Corporation" shall mean the Corporation for preserving and improving the Port of *Dublin.*

"Consular Officer" shall include Consul-General, Consul, and Vice-Consul, and any person for the time being discharging the duties of Consul-General, Consul, or Vice-Consul.

"Receiver" shall mean any person appointed in pursuance of this Act Receiver of Wreck.

"Pilotage Authority" shall include all bodies and persons authorised to appoint or license pilots, or to fix or alter rates of pilotage, or to exercise any jurisdiction in respect of pilotage.

"Pilot" shall mean any person not belonging to a ship who has the conduct thereof.

"Qualified Pilot" shall mean any person duly licensed by any pilotage authority to conduct ships to which he does not belong.

"Master" shall include every person (except a pilot) having command or charge of any ship.

"Seaman" shall include every person (except masters, pilots, and apprentices duly indentured and registered), employed or engaged in any capacity on board any ship.

"Salvor" shall, in the case of salvage services rendered by the officers or crew or part of the crew of any ship belonging to Her Majesty, mean the person in command of such ship.

"Person" shall include body corporate.

"Ship" shall include every description of vessel used in navigation not propelled by oars.

"Foreign-going Ship" shall include every ship employed in trading or going between some place or places in the United Kingdom, and some place or places situate beyond the following limits; that is to say, the coasts of the United Kingdom, the islands of *Guernsey*, *Jersey*, *Sark*, *Alderney*, and *Man*, and the Continent of *Europe* between the river *Elbe* and *Brest* inclusive.

"Home-trade Ship" shall include every ship employed in trading or going within the following limits; that is to say, the United Kingdom, the islands of *Guernsey*, *Jersey*, *Sark*, *Alderney*, and *Man*, and the continent of *Europe* between the river *Elbe* and *Brest* inclusive.

"Home-trade Passenger Ship" shall mean every home-trade ship employed in carrying passengers.

"Lighthouses" shall, in addition to the ordinary meaning of the word, include floating and other lights exhibited for the guidance of ships, and "buoys and beacons" shall include all other marks and signs of the sea.

"Wreck" shall include jetsam, flotsam, lagan, and derelict found in or on the shores of the sea or any tidal water.

Commencement of Act.

3. This Act shall come into operation on the first day of *May* one thousand eight hundred and fifty-five.

Exemption of Her Majesty's Ships.

4. This Act shall not, except as hereinafter specially provided, apply to ships belonging to Her Majesty.

Division of Act.

5. This Act shall be divided into eleven parts :—

The first part relating to the Board of Trade: its general functions.

The second part to British ships: their ownership, measurement and registry.

The third part to masters and seamen.

The fourth part to safety and prevention of accidents.

The fifth part to pilotage.

The sixth part to lighthouses.

The seventh part to the mercantile marine fund.
The eighth part to wrecks, casualties, and salvage.
The ninth part to liability of shipowners.
The tenth part to legal procedure.
The eleventh part to miscellaneous matters.

PART I.

THE BOARD OF TRADE: ITS GENERAL FUNCTIONS.

6. The Board of Trade shall be the department to undertake the general superintendence of matters relating to merchant ships and seamen.

7. Certificates and documents purporting to be sealed or signed in a given manner to be received in evidence.

8. Board of Trade to issue forms of instruments.

9. Certain forms and instruments to be exempt from stamp duty.

10. Penalties for forgery of seal and fraudulent alteration of forms, and for not using forms issued by Board of Trade.

11. Application of moneys and fines paid to Board of Trade.

12. Returns to Board of Trade.

Officers of Board of Trade, Naval Officers, Consuls, the Registrar-General of Seamen, Officers of Customs, and Shipping-Masters, may inspect Documents and muster Crews.

13. Every officer of the Board of Trade, and every commissioned officer of any of Her Majesty's ships on full pay, and every *British* consular officer, and the Registrar-General of Seamen and his assistant, and every chief officer of customs in any place in Her Majesty's dominions, and every shipping-master, may, in cases where he has reason to suspect that the provisions of this Act or the laws for the time being relating to merchant seamen and to navigation are not complied with, exercise the following powers; (that is to say),

He may require the owner, master, or any of the crew of any *British* ship to produce any official log-books or other documents relating to such crew or any member thereof in their respective possession or control.

He may require any such master to produce a list of all persons on board his ship, and take copies of such official log-books, or documents, or of any part thereof.

He may muster the crew of any such ship.

He may summon the master to appear and give any explanation concerning such ship or her crew or the said official log-books or documents.

And if upon requisition duly made by any person so authorised in that behalf as aforesaid, any person refuses or neglects to produce any such official log-book or document as he is hereinbefore required to produce,

or to allow the same to be inspected or copied as aforesaid, or impedes any such muster of a crew as aforesaid, or refuses or neglects to give any explanation which he is hereinbefore required to give, or knowingly misleads or deceives any person hereinbefore authorised to demand any such explanation, he shall for each such offence incur a penalty not exceeding twenty pounds.

Board of Trade may appoint Inspectors.

14. The Board of Trade may from time to time, whenever it seems expedient to them so to do, appoint any person as an inspector, to report to them upon the following matters; (that is to say),

(1.) Upon the nature and causes of any accident or damage which any ship has sustained or caused, or is alleged to have sustained or caused.

(2.) Whether the provisions of this Act, or any regulations made under or by virtue of this Act, have been complied with.

(3.) Whether the hull and machinery of any steam-ship are sufficient and in good condition.

Powers of Inspectors; Witnesses to be allowed Expenses; Penalty for refusing to give Evidence.

15. Every such inspector as aforesaid shall have the following powers:—

(1.) He may go on board any ship, and may inspect the same or any part thereof, or any of the machinery, boats, equipments, or articles on board thereof to which the provisions of this Act apply, not unnecessarily detaining or delaying her from proceeding on any voyage.

(2.) He may enter and inspect any premises the entry or inspection of which appears to him to be requisite for the purpose of the report which he is directed to make.

(3.) He may, by summons under his hand, require the attendance of all such persons as he thinks fit to call before him and examine for such purpose, and may require answers or returns to any inquiries he thinks fit to make

(4.) He may require and enforce the production of all books, papers, or documents which he considers important for such purpose.

(5.) He may administer oaths, or may, in lieu of requiring or administering an oath, require every person examined by him to make and subscribe a declaration of the truth of the statements made by him in his examination.

And every witness so summoned as aforesaid shall be allowed such expenses as would be allowed to any witness attending on subpœna to give evidence before any Court of Record, or if in *Scotland*, to any witness attending on citation the Court of Justiciary; and in case of any dispute as to the amount of such expenses, the same shall be referred by the inspector to one of the Masters of Her Majesty's Court of Queen's Bench in *England* or *Ireland*, or to the Queen's and Lord Treasurer's Remembrancer in *Scotland*, who, on a request made to him for that purpose under the hand of the said inspector, shall ascertain and certify the proper amount of such

expenses; and every person who refuses to attend as a witness before any such inspector, after having been required so to do in the manner hereby directed, and after having had a tender made to him of the expenses (if any) to which he is entitled as aforesaid, or who refuses or neglects to make any answer, or to give any return, or to produce any document in his possession, or to make or subscribe any declarations which any such inspector is hereby empowered to require, shall for each such offence incur a penalty not exceeding ten pounds.

16. Penalty for obstructing inspectors in the execution of their duty.

PART II.

BRITISH SHIPS: THEIR OWNERSHIP, MEASUREMENT, AND REGISTRY.

Application of Part II. of Act.

17. The second part of this Act shall apply to the whole of Her Majesty's dominions.

Description and Ownership of British Ships.

18. No ship shall be deemed to be a *British* ship unless she belongs wholly to owners of the following descriptions; (that is to say),

(1.) Natural-born *British* subjects.

Provided that no natural-born subject who has taken the oath of allegiance to any foreign sovereign or state shall be entitled to be such owner as aforesaid, unless he has subsequently to taking such last-mentioned oath taken the oath of allegiance to Her Majesty, and is and continues to be during the whole period of his so being an owner resident in some place within Her Majesty's dominions, or if not so resident, member of a *British* factory, or partner in a house actually carrying on business in the United Kingdom or in some other place within Her Majesty's dominions.

(2.) Persons made denizens by letters of denization, or naturalised by or pursuant to any Act of the Imperial Legislature, or by or pursuant to any Act or ordinance of the proper legislative authority in any *British* possession.

Provided that such persons are and continue to be during the whole period of their so being owners resident in some place within Her Majesty's dominions, or if not so resident, members of a *British* factory, or partners in a house actually carrying on business in the United Kingdom or in some other place within Her Majesty's dominions, and have taken the oath of allegiance to Her Majesty subsequently to the period of their being so made denizens or naturalised.

(3.) Bodies corporate established under, subject to the laws of, and having their principal place of business in the United Kingdom or some *British* possession.

British Ships with certain Exceptions must be Registered.

19. Every *British* ship must be registered in manner hereinafter mentioned, except,

(1.) Ships duly registered before this Act comes into operation.

(2.) Ships not exceeding fifteen tons burden employed solely in navigation on the rivers or coasts of the United Kingdom, or on the rivers or coasts of some *British* possession within which the managing owners of such ships are resident.

(3.) Ships not exceeding thirty tons burden, and not having a whole or fixed deck, and employed solely in fishing or trading coastwise on the shores of *Newfoundland* or parts adjacent thereto, or in the Gulf of *St. Lawrence*, or on such portion of the coasts of *Canada*, *Nova Scotia*, or *New Brunswick* as lie bordering on such Gulf.

And no ship hereby required to be registered shall, unless registered, be recognised as a *British* ship; and no officer of customs shall grant a clearance or transire to any ship hereby required to be registered for the purpose of enabling her to proceed to sea as a *British* ship, unless the master of such ship, upon being required so to do, produces to him such certificate of registry as is hereinafter mentioned; and if such ship attempts to proceed to sea as a *British* ship without a clearance or transire, such officer may detain such ship until such certificate is produced to him.

MEASUREMENT OF TONNAGE.

Tonnage Deck; Feet; Decimals.

20. Throughout the following rules the tonnage deck shall be taken to be the upper deck in ships which have less than three decks, and to be the second deck from below in all other ships; and in carrying such rules into effect all measurements shall be taken in feet and fractions of feet, and all fractions of feet shall be expressed in decimals.

RULE I.

For Ships to be Registered and other Ships of which the Hold is clear.

21. The tonnage of every ship to be registered, with the exceptions mentioned in the next section, shall previously to her being registered be ascertained by the following rule, hereinafter called Rule I.; and the tonnage of every ship to which such rule can be applied, whether she is about to be registered or not, shall be ascertained by the same rule:—

Lengths.

(1.) Measure the length of the ship in a straight line along the upper side of the tonnage deck from the inside of the inner plank (aver-

age thickness) at the side of the stem to the inside of the midship stern timber or plank there, as the case may be (average thickness), deducting from this length what is due to the rake of the bow in the thickness of the deck, and what is due to the rake of the stern timber in the thickness of the deck, and also what is due to the rake of the stern timber in one-third of the round of the beam; divide the length so taken into the number of equal parts required by the following table according to the class in such table to which the ship belongs.

TABLE.

Class 1. Ships of which the tonnage deck is according to the above measurement fifty feet long or under, into four equal parts.

" 2. Ships of which the tonnage deck is according to the above measurement above fifty feet long and not exceeding 120, into six equal parts.

" 3. Ships of which the tonnage deck is according to the above measurement above 120 feet long and not exceeding 180, into eight equal parts.

" 4. Ships of which the tonnage deck is according to the above measurement above 180 feet long and not exceeding 225, into ten equal parts.

" 5. Ships of which the tonnage deck is according to the above measurement above 225 feet long, into twelve equal parts.

Transverse Areas.

(2.) Then, the hold being first sufficiently cleared to admit of the required depths and breadths being properly taken, find the transverse area of such ship at each point of division of the length as follows:—Measure the depth at each point of division, from a point at a distance of one-third of the round of the beam below such deck, or, in case of a break, below a line stretched in continuation thereof, to the upper side of the floor timber at the inside of the limber strake, after deducting the average thickness of the ceiling which is between the bilge planks and limber strake; then, if the depth at the midship division of the length do not exceed sixteen feet, divide each depth into four equal parts; then measure the inside horizontal breadth at each of the three points of division, and also at the upper and lower points of the depth, extending each measurement to the average thickness of that part of the ceiling which is between the points of measurement; number these breadths from above—(*i.e.*, numbering the upper breadth one, and so on down to the lowest breadth); multiply the second and fourth by four, and the third by two; add these products together, and to the sum add the first breadth and the fifth: multiply the quantity thus obtained by one-third of the common interval between the breadths, and the product shall be deemed the transverse area; but if the midship depth exceed sixteen feet, divide each depth into six equal parts instead of four, and measure as before directed the

horizontal breadths at the five points of division and also at the upper and lower points of the depth; number them from above as before; multiply the second, fourth, and sixth by four, and the third and fifth by two; add these products together, and to the sum add the first breadth and the seventh; multiply the quantity thus obtained by one-third of the common interval between the breadths, and the product shall be deemed the transverse area.

Computation of Areas.

(3.) Having thus ascertained the transverse area at each point of division of the length of the ship as required by the above table, proceed to ascertain the register tonnage of the ship in the following manner:—Number the areas successively 1, 2, 3, &c., No. 1 being at the extreme limit of the length at the bow, and the last No. at the extreme limit of the length at the stern; then, whether the length be divided according to the table into four or twelve parts as in classes 1 and 5, or any intermediate number as in classes, 2 3, and 4, multiply the second and every even-numbered area by four, and the third and every odd-numbered area (except the first and last) by two; add these products together, and to the sum add the first and last if they yield anything; multiply the quantity thus obtained by one-third of the common interval between the areas, and the product will be the cubical contents of the space under the tonnage deck; divide this product by one hundred, and the quotient being the tonnage under the tonnage deck shall be deemed to be the register tonnage of the ship, subject to the additions and deductions hereinafter mentioned.

Poop and any other closed-in Space.

(4.) If there be a break, a poop, or any other permanent closed-in space on the upper deck, available for cargo or stores, or for the berthing or accommodation of passengers or crew, the tonnage of such space shall be ascertained as follows:—Measure the internal mean length of such space in feet, and divide it into two equal parts; measure at the middle of its height three inside breadths—namely, one at each end and the other at the middle of the length; then to the sum of the end breadths add four times the middle breadth, and multiply the whole sum by one-third of the common interval between the breadths; the product will give the mean horizontal area of such space; then measure the mean height, and multiply by it the mean horizontal area; divide the product by one hundred, and the quotient shall be deemed to be the tonnage of such space, and shall be added to the tonnage under the tonnage deck, ascertained as aforesaid, subject to the following provisoes; first, that nothing shall be added for a closed-in space solely appropriated to the berthing of the crew, unless such space exceeds one twentieth of the remaining tonnage of the ship, and in case of such excess the excess only shall be added; and secondly, that nothing shall be

added in respect of any building erected for the shelter of deck-passengers, and approved by the Board of Trade.

In case of Two or more Decks.

(5.) If the ship has a third deck, commonly called a spar deck, the tonnage of the space between it and the tonnage deck shall be ascertained as follows:—Measure in feet the inside length of the space at the middle of its height from the plank at the side of the stem to the lining on the timbers at the stern, and divide the length into the same number of equal parts into which the length of the tonnage deck is divided as above directed; measure (also at the middle of its height) the inside breadth of the space at each of the points of division, also the breadth of the stem and the breadth at the stern; number them successively, 1, 2, 3, &c., commencing at the stem; multiply the second and all the other even-numbered breadths by four, and the third and all the other odd-numbered breadths (except the first and last) by two; to the sum of these products add the first and last breadths; multiply the whole sum by one-third of the common interval between the breadths, and the result will give in superficial feet the mean horizontal area of such space; measure the mean height of such space, and multiply by it the mean horizontal area, and the product will be the cubical contents of the space; divide this product by one hundred, and the quotient shall be deemed to be the tonnage of such space, and shall be added to the other tonnage of the ship ascertained as aforesaid; and if the ship has more than three decks, the tonnage of each space between decks above the tonnage deck shall be severally ascertained in manner above described, and shall be added to the tonnage of the ship ascertained as aforesaid.

RULE II.

For Ships not requiring Registry with Cargo on Board.

22. Ships which, requiring to be measured for any purpose other than registry, have cargo on board, and ships which, requiring to be measured for the purpose of registry, cannot be measured by the rule above given, shall be measured by the following rule, hereinafter called Rule II.:—

Length; Breadth; Girting of the Ship.

(1.) Measure the length on the upper deck from the outside of the outer plank at the stem to the aftside of the stern-post, deducting therefrom the distance between the aftside of the stern-post and the rabbet of the stern-post at the point where the counter-plank crosses it; measure also the greatest breadth of the ship to the outside of the outer planking or wales, and then, having first marked on the outside of the ship on both sides thereof the height of the upper deck at the ship's sides, girt the ship at the greatest

breadth in a direction perpendicular to the keel from the height so marked on the outside of the ship on the one side to the height so marked on the other side by passing a chain under the keel; to half the girth thus taken add half the main breadth; square the sum; multiply the result by the length of the ship taken as aforesaid; then multiply this product by the factor ·0018 (eighteen ten-thousandths) in the case of ships built of wood, and by ·0021 (twenty-one ten-thousandths) in the case of ships built of iron, and the product shall be deemed the register tonnage of the ship[1] subject to the additions and deductions hereinafter mentioned.

Poop and other closed-in Spaces on Upper Deck.

(2.) If there be a break, a poop, or other closed-in space on the upper deck, the tonnage of such space shall be ascertained by multiplying together the mean length, breadth, and depth of such space, and dividing the product by 100, and the quotient so obtained shall be deemed to be the tonnage of such space, and shall, subject to the deduction for a closed-in space appropriated to the crew as mentioned in Rule I., be added to the tonnage of the ship ascertained as aforesaid. (See also The Merchant Shipping Act Amendment Act, 1855, 18 and 19 Vict., cap. 91, sec. 14 *post.*)

RULE III.

Allowance for Engine Room in Steamers.

23. In every ship propelled by steam or other power requiring engine room, an allowance shall be made for the space occupied by the propelling power, and the amount so allowed shall be deducted from the gross tonnage of the ship ascertained as aforesaid, and the remainder shall be deemed to be the register tonnage of such ship; and such deduction shall be estimated as follows; (that is to say),

To be Rateable in ordinary Steamers.

(*a.*) As regards ships propelled by paddle-wheels in which the tonnage of the space solely occupied by and necessary for the proper working of the boilers and machinery is above twenty *per cent.* and under thirty *per cent.* of the gross tonnage of the ship, such deduction shall be thirty-seven one-hundredths of such gross tonnage; and in ships propelled by screws in which the tonnage of such space is above thirteen *per cent.* and under twenty *per cent.* of such gross tonnage, such deduction shall be thirty-two one-hundredths of such gross tonnage.

May be measured where the Space is unusally Large or Small.

(*b.*) As regards all other ships, the deduction shall, if the Commissioners of Customs and the owner both agree thereto, be estimated in the same manner; but either they or he may in their or his discretion require the space to be measured and the deduction estimated accord-

[1] So printed in the Act.

ingly; and whenever such measurement is so required, the deduction shall consist of the tonnage of the space actually occupied by or required to be enclosed for the proper working of the boilers and machinery, with the addition in the case of ships propelled by paddle-wheels of one-half, and in the case of ships propelled by screws of three-fourths, of the tonnage of such space; and the measurement and use of such space shall be governed by the following rules; (that is to say),

Mode of Measurement.

(1.) Measure the mean depth of the space from its crown to the ceiling, at the limber strake, measure also three, or, if necessary, more than three breadths of the space at the middle of its depths, taking one of such measurements at each end, and another at the middle of the length; take the mean of such breadths; measure also the mean length of the space between the foremost and aftermost bulkheads or limits of its length; excluding such parts, if any, as are not actually occupied by or required for the proper working of the machinery; multiply together these three dimensions of length, breadth, and depth, and the product will be the cubical contents of the space below the crown; then find the cubical contents of the space or spaces, if any, above the crown aforesaid, which are framed in for the machinery, or for the admission of light and air, by multiplying together the length, depth, and breadth thereof; add such contents to the cubical contents of the space below the crown; divide the sum by 100; and the result shall be deemed to be the tonnage of the said space.

In case of Separate Compartments.

(2.) If in any ship in which the space aforesaid is to be measured the engines and boilers are fitted in separate compartments, the contents of each shall be measured severally in like manner, according to the above rules, and the sum of their several results shall be deemed to be the tonnage of the said space.

Shaft Trunk of Screw-Steamer.

(3.) In the case of screw-steamers in which the space aforesaid is to be measured, the contents of the shaft trunk shall be added to and deemed to form part of such space, and shall be ascertained by multiplying together the mean length, breadth, and depth of the trunk, and dividing the product by 100.

Alteration of Engine Room.

(4.) If in any ship in which the space aforesaid is to be measured any alteration be made in the length or capacity of such space, or if any cabins be fitted in such space, such ship shall be deemed to be a ship not registered until remeasurement.

Penalty for carrying Goods in such Space.

(5.) If in any ship in which the space aforesaid is to be measured any goods or stores are stowed or carried in such space, the master and owner shall each be liable to a penalty not exceeding one hundred pounds.

RULE IV.

Open Ships how Measured.

24. In ascertaining the tonnage of open ships the upper edge of the upper strake is to form the boundary line of measurement, and the depths shall be taken from an athwartship line, extended from upper edge to upper edge of the said strake at each division of the length.

Tonnage and Number of Certificate to be carried on Main Beam.

25. *In every registered British ship the number denoting the register tonnage, ascertained as hereinbefore directed, and the number of her certificate of registry, shall be deeply carved ar otherwise permanently marked on her main beam, and shall be so continued; and if it at any time cease to be so continued, such ship shall no longer be recognised as a British ship.* (Repealed by the Merchant Shipping Act, 1871, 34 and 35 Vict., cap. 110, sec. 12. See now sec. 3 of 36 and 37 Vict., cap. 35, *post.*)

Tonnage when once ascertained, to be ever after deemed the Tonnage.

26. Whenever the tonnage of any ship has been ascertained and registered in accordance with the provisions of this Act, the same shall thenceforth be deemed to be the tonnage of such ship, and be repeated in every subsequent registry thereof, unless any alteration is made in the form or capacity of such ship, or unless it is discovered that the tonnage of such ship has been erroneously computed; and in either of such cases such ship shall be remeasured, and her tonnage determined and registered according to the rules hereinbefore contained in that behalf.

Remeasurement of Ships already Registered may be made, but not to be Compulsory.

27. The rules for the measurement of tonnage herein contained shall not make it necessary to alter the present registered tonnage of any *British* ship registered before this Act comes into operation; but if the owner of any such ship desires to have the same remeasured according to such rules, he may apply to the *Commissioners of Customs* for the purpose, and such *Commissioners* shall thereupon, and on payment of such reasonable charge for the expenses of remeasurement, not exceeding the sum of seven shillings and sixpence for each transverse section, as they may authorise, direct such remeasurement to be made, and such ship shall thereupon be remeasured according to such rules as aforesaid, or according to such of them as may be applicable; and the number denoting the registered tonnage shall be altered accordingly.

Power to remeasure Engine Rooms improperly extended.

28. If it appears to the *Commissioners of Customs* that in any steamship measured before this Act comes into operation store-rooms or coal-bunkers have been introduced into or thrown across the engine room, so that the deduction from the tonnage on account of the engine room is larger than it ought to be, the said *Commissioners* may, if they think fit, direct such engine room to be remeasured according to the rules in force before this Act comes into operation, excluding the space occupied by such store-rooms or coal-bunkers, or may, if the owner so desire, cause the ship to be remeasured according to the rules hereinbefore contained, and subject to the conditions contained in the last preceding section; and after remeasurement the said *Commissioners* shall cause the ship to be registered anew, or the registry thereof to be altered, as the case may require.

Officers may be appointed and Regulations made for Measurement of Ships.

29. The *Commissioners of Customs* may, with the sanction of the Treasury, appoint such persons to superintend the survey and admeasurement of ships as they think fit; and may, *with the approval of the Board of Trade*, make such regulations for that purpose as may be necessary; and also, *with the like approval*, make such modifications and alterations as from time to time become necessary in the tonnage rules hereby prescribed, in order to the more accurate and uniform application thereof, and the effectual carrying out of the principle of admeasurement therein adopted. (For the purpose of the three last preceding sections, the Board of Trade are now substituted for the Commisssioners of Customs, Merchant Shipping Act, 1872, 35 and 36 Vict., cap. 73, sec. 3, *post.*)

On the subject of tonnage rates and measurement of tonnage, see in addition Merchant Shipping Act Amendment Act, 1862, 25 and 26 Vict., cap. 63, secs. 4 and 60, *post.*

REGISTRY OF BRITISH SHIPS.

Registrars of British Ships.

30. The following persons are required to register *British* ships, and shall be deemed registrars for the purposes of this Act; (that is to say),

(1.) At any port or other place in the United Kingdom or *Isle of Man* approved by the Commissioners of Customs for the registry of ships, the collector, comptroller, or other principal officer of customs for the time being.

(2.) In the islands of *Guernsey* and *Jersey* the principal officers of Her Majesty's customs, together with the governor, lieutenant-governor, or other person administering the government of such islands respectively.

(3.) In *Malta*, *Gibraltar*, and *Heligoland*, the governor, lieutenant-governor, or other person administering the government of such places respectively.

(4.) At any port or place so approved as aforesaid within the limits of the charter, but not under the government of the *East India* Com-

pany, and at which no custom-house is established, the collector of duties, together with the governor, lieutenant-governor, or other person administering the government.

(5.) At the ports of *Calcutta*, *Madras*, and *Bombay*, the master attendants, and at any other port or place so approved as aforesaid within the limits of the charter and under the government of the *East India* Company, the collector of duties, or any other person of six years' standing in the civil service of the said Company who is appointed by any of the governments of the said Company to act for this purpose.

(6.) At every other port or place so approved as aforesaid within Her Majesty's dominions abroad, the collector, comptroller, or other principal officer of customs or of navigation laws, or if there is no such officer resident at such port or place, the governor, lieutenant-governor, or other person administering the government of the possession in which such port or place is situate.

Substitution of Governor abroad for Commissioners of Customs, and of Consul for Justice.

31. The governor, lieutenant-governor, or other person administering the government in any *British* possession where any ship is registered under the authority of this Act shall, with regard to the performance of any act or thing relating to the registry of a ship or of any interest therein, be considered in all respects as occupying the place of the Commissioners of Customs; and any *British* consular officer shall, in any place where there is no justice of the peace, be authorised to take any declaration hereby required or permitted to be made in the presence of a justice of the peace.

Registrar to keep Register Books.

32. Every registrar shall keep a book, to be called "The Register Book," and enter therein the particulars hereinafter required to be registered. (As to declaring foreign ports ports of registry, see Merchant Shipping Act, 1873, 36 and 37 Vict., cap. 85, sec. 29, *post.*)

Port of Registry of British Ship.

33. The port or place at which any *British* ship is registered for the time being shall be considered her port of registry or the port to which she belongs.

Name of Ship.

34. The following rules shall be observed with respect to the names of *British* ships; (that is to say),

(1.) *Before registry the name of each ship and of the port to which she belongs shall be painted on a conspicuous part of her stern on a dark ground in white or yellow letters of a length not less than four inches.*

(2.) *No change shall be made in the name of any registered ship.*

(3.) *No concealment, absence, or avoidable obliteration of the above names shall be permitted, except for the purpose of escaping capture by an enemy.*

(4.) *The ship shall not be described by or with the knowledge of the owner or master by any name other than the one by which she is registered.*

And for every breach of the above rules, or any of them, the owner and master shall each incur a penalty (see section 13 of 18 and 19 Vict., cap. 91) not exceeding one hundred pounds. (Repealed by Merchant Act, 1871, 34 and 35 Vict., cap. 110, sec. 12. See now Merchant Shipping Act, 1873, 36 and 37 Vict., cap. 85, secs. 3, 5, and Merchant Shipping Act, 1871, 34 and 35 Vict., cap. 110, sec. 6, *post.*)

Application for Registry, by whom to be made.

35. Every application for the registry of a ship shall, in the case of individuals, be made by the person requiring to be registered as owner, or by some one or more of such persons if more than one, or by his or their duly authorised agent, and in the case of bodies corporate by their duly authorised agent: the authority of such agent, if appointed by individuals, to be testified by some writing under the hands of the appointers, and if appointed by a body corporate, by some instrument under the common seal of such body corporate.

Survey of Ship.

36. Before registry, the ship shall be surveyed by a person duly appointed under this Act; and such surveyor shall grant a certificate in the form marked A. in the Schedule hereto, specifying her tonnage, build, and such other particulars descriptive of the identity of the ship as may from time to time be required by the Board of Trade; and such certificate shall be delivered to the registrar before registry.

Rules as to Entries in Register Book.

37. The following rules shall be observed with respect to entries in the register book; (that is to say),

(1.) The property in a ship shall be divided into sixty-four shares.

(2.) Subject to the provisions with respect to joint-owners or owners by transmission hereinafter contained, not more than thirty-two individuals shall be entitled to be registered at the same time as owners of any one ship; but this rule shall not effect the beneficial title of any number of persons, or of any company, represented by or claiming under or through any registered owner or joint-owner.

(3.) No person shall be entitled to be registered as owner of any fractional part of a share in a ship; but any number of persons, not exceeding five, may be registered as joint-owners of a ship or of a share or shares therein.

(4.) Joint-owners shall be considered as constituting one person only, as regards the foregoing rule relating to the number of persons entitled to be registered as owners, and shall not be entitled to dispose in

severalty of any interest in any ship or in any share or shares therein in respect of which they are registered.

(5.) A body corporate may be registered as owner by its corporate name.

Declaration of Ownership by Individual Owner.

38. No person shall be entitled to be registered as owner of a ship or any share therein until he has made and subscribed a declaration in the form marked B. in the Schedule hereto, referring to the ship as described in the certificate of the surveyor, and containing the following particulars; (that is to say),

(1.) A statement of his qualification to be an owner of a share in a *British* ship.

(2.) A statement of the time when and the place where such ship was built, or (if the ship is foreign-built, and the time and place of building not known) a statement that she is foreign-built, and that he does not know the time or place of her building; and, in addition thereto, in the case of a foreign ship, a statement of her foreign name, or (in the case of a ship condemned) a statement of the time, place, and court at and by which she was condemned.

(3.) A statement of the name of the master.

(4.) A statement of the number of shares in such ship of which he is entitled to be registered as owner.

(5.) A denial that, to the best of his knowledge and belief, any unqualified person or body of persons is entitled as owner to any legal or beneficial interest in such ship or any share therein.

The above declaration of ownership shall be made and subscribed in the presence of the registrar if the declarant reside within five miles of the custom-house of the port of registry, but if beyond that distance, in the presence of any registrar or of any justice of the peace.

Declaration of Ownership by Body Corporate.

39. No body corporate shall be entitled to be registered as owner of a ship or of any share therein until the secretary or other duly appointed public officer of such body corporate has made and subscribed in the presence of the registrar of the port of registry a declaration in the form marked C. in the Schedule hereto, referring to the ship as described in the certificate of the surveyor, and containing the following particulars; (that is to say),

(1.) A statement of such circumstances of the constitution and business of such body corporate as prove it to be qualified to own a *British* ship.

(2.) A statement of the time when and the place where such ship was built, or (if the ship is foreign-built, and the time and place of building unknown) a statement that she is foreign-built, and that he does not know the time or place of her building; and, in addition thereto, in the case of a foreign ship, a statement of her foreign name, or (in the case of a ship condemned) a statement of the time, place, and court at and by which she was condemned.

(3.) A statement of the name of the master.
(4.) A statement of the number of shares in such ship of which such body corporate is owner.
(5.) A denial that, to the best of his knowledge and belief, any unqualified person or body of persons is entitled as owner to any legal or beneficial interest in such ship or any share therein.

Evidence to be Produced on Registry.

40. Upon the first registry of a ship there shall, in addition to the declaration of ownership, be produced the following evidence; (that is to say),
(1.) In the case of a *British*-built ship, a certificate (which the builder is hereby required to grant under his hand) containing a true account of the proper denomination and of the tonnage of such ship as estimated by him, and of the time when and of the place where such ship was built, together with the name of the party (if any) on whose account he has built the same, and, if any sale or sales have taken place, the bill or bills of sale under which the ship or share therein has become vested in the party requiring to be registered as owner.
(2.) In the case of a foreign-built ship, the same evidence as in the case of a *British*-built ship, unless the person requiring to be registered as owner, or, in the case of a body corporate, the duly appointed officer, declares that the time or place of her building is unknown, or that the builder's certificate cannot be procured, in which case there shall be required only the bill or bills of sale under which the ship or share therein became vested in the party requiring to be registered as owner thereof.
(3.) In the case of a ship condemned by any competent court, an official copy of the condemnation of such ship.

Penalty on Builder for False Certificate.

41. If any builder wilfully makes a false statement in any certificate hereby required to be granted by him, he shall for every such offence incur a penalty not exceeding one hundred pounds.

Particulars of Entry in Register Book.

42. As soon as the foregoing requisites to the due registry of a ship have been complied with, the registrar shall enter in the register book the following particulars relating to such ship; (that is to say),
(1.) The name of the ship and of the port to which she belongs.
(2.) The details as to her tonnage, build, and description comprised in the certificate hereinbefore directed to be given by the surveyor.
(3.) The several particulars as to her origin stated in the declaration or declarations of ownership.
(4.) The names and descriptions of her registered owner or owners, and if there is more than one such owner, the proportions in which they are interested in such ship.

No Notice taken of Trusts.

43. No notice of any trust, express, implied, or constructive, shall be entered in the register book, or receivable by the registrar; and, subject to any rights and powers appearing by the register book to be vested in any other party, the registered owner of any ship or share therein shall have power absolutely to dispose in manner hereinafter mentioned of such ship or share, and to give effectual receipts for any money paid or advanced by way of consideration. But as to equities, see now Merchant Shipping Act Amendment Act, 1862, 25 and 26 Vict., cap. 63, sec. 3, *post.*

CERTIFICATE OF REGISTRY.

Certificate of Registry to be Granted.

44. Upon the completion of the registry of any ship, the registrar shall grant a certificate of registry in the form marked D. in the Schedule hereto, comprising the following particulars; (that is to say),

(1.) The name of the ship and of the port to which she belongs.
(2.) The details as to her tonnage, build, and description comprised in the certificate hereinbefore directed to be given by the surveyor.
(3.) The name of her master.
(4.) The several particulars as to her origin stated in the declaration or declarations of ownership.
(5.) The names and descriptions of her registered owner or owners, and if there is more than one such owner, the proportions in which they are respectively interested, endorsed upon such certificate.

Change of Owners to be endorsed on Certificate of Registry.

45. Whenever any change takes place in the registered ownership of any ship, then, if such change occurs at a time when the ship is at her port of registry, the master shall forthwith deliver the certificate of registry to the registrar, and he shall endorse thereon a memorandum of such change: but if such change occurs during the absence of the ship from her port of registry, then upon her first return to such port the master shall deliver the certificate of registry to the registrar, and he shall endorse thereon a like memorandum of the change; or if she previously arrives at any port where there is a *British* registrar, such registrar shall, upon being advised by the registrar of her port of registry of the change having taken place, endorse a like memorandum thereof on the certificate of registry, and may for that purpose require the certificate to be delivered to him, so that the ship be not thereby detained; and any master who fails to deliver to the registrar the certificate of registry as hereinbefore required shall incur a penalty not exceeding one hundred pounds.

Change of Master to be endorsed on Certificate of Registry.

46. Whenever the master of any *British* registered ship is changed, the following persons, that is to say, if such change is made in consequence of the sentence of any naval court, the presiding officer of such court, but

if the change takes place from any other cause, the registrar, or if there is no registrar, the *British* consular officer resident at the port where such change takes place, shall endorse on the certificate of registry a memorandum of such change, and subscribe his name to such endorsement, and forthwith report the change of master to the Commissioners of Customs [1] in *London;* and the officers of customs at any port situate within Her Majesty's dominions may refuse to admit any person to do any act at such port as master of any *British* ship, unless his name is inserted in or endorsed upon the certificate of registry of such ship as the last-appointed master thereof.

Power to grant New Certificate.

47. The registrar may, with the sanction of the Commissioners of Customs, upon the delivery up to him of the former certificate of registry, grant a new certificate in the place of the one so delivered up.

Provision in case of Loss of Certificate.

48. In the event of the certificate of registry of any ship being mislaid, lost, or destroyed, if such event occurs at any port in the United Kingdom, the ship being registered in the United Kingdom, or at any port in any *British* possession, the ship being registered in the same *British* possession, then the registrar of her port of registry shall grant a new certificate of registry, in lieu of and as a substitute for her original certificate of registry; but if such event occurs elsewhere, the master or some other person having knowledge of the circumstances shall make a declaration before the registrar of any port having a *British* registrar, at which such ship is at the time or first arrives after such mislaying, loss, or destruction; and such declaration shall state the facts of the case, and the names and descriptions of the registered owners of such ship, to the best of the declarant's knowledge and belief; and the registrar shall thereupon grant a provisional certificate as near to the form appointed by this Act as circumstances permit, and shall insert therein a statement of the circumstances under which such provisional certificate is granted.

Provisional Certificate to be delivered up.

49. Every such provisional certificate shall, within ten days after the first subsequent arrival of the ship at her port of discharge in the United Kingdom, if registered in the United Kingdom, or if registered elsewhere, at her port of discharge in the *British* possession within which her port of registry is situate, be delivered up to the registrar thereof, who shall thereupon grant a new one, as near to the form appointed by this Act as circumstances permit; and if the master neglects to deliver up such certificate within such time, he shall incur a penalty not exceeding fifty pounds.

Custody of Certificate; Delivery of Certificate may be required; Penalty for Detention.

50. The certificate of registry shall be used only for the lawful navigation of the ship, and shall not be subject to detention by reason of any

[1] Now the Registrar-General of Shipping and Seamen, Merchant Shipping Act, 1872, 35 and 36 Vict., cap. 73, sec. 4, *post.*

title, lien, charge, or interest whatsoever which any owner, mortgagee, or other person may have or claim to have on or in the ship described in such certificate; and if any person whatever, whether interested or not in the ship, refuses on request to deliver up such certificate, when in his possession or under his control, to the person for the time being entitled to the custody thereof, for the purposes of such lawful navigation as aforesaid, or to any registrar, officer of the customs, or other person legally entitled to require such delivery, it shall be lawful for any justice, by warrant under his hand and seal, or for any court capable of taking cognisance of such matter, to cause the person so refusing to appear before him and to be examined touching such refusal; and unless it is proved to the satisfaction of such justice or court that there was reasonable cause for such refusal, the offender shall incur a penalty not exceeding one hundred pounds; but if it is made to appear to such justice or court that the certificate is lost, the party complained of shall be discharged, and such justice or court shall thereupon certify that the certificate of registry is lost.

Mode of Proceeding if detaining Party abscond.

51. If the person charged with such detainer or refusal is proved to have absconded, so that the warrant of the justice or process of the court cannot be served upon him, or if he persists in his refusal to deliver the certificate, such justice or court shall certify the fact, and the same proceedings may then be taken as in the case of a certificate of registry mislaid, lost, or destroyed, or as near thereto as circumstances permit.

Penalty for using Improper Certificate.

52. If the master or owner of any ship uses or attempts to use for the navigation of such ship a certificate of registry not legally granted in respect of such ship, he shall be guilty of a misdemeanour, and it shall be lawful for any commissioned officer on full pay in the military or naval service of Her Majesty, or any *British* officer of customs, or any *British* consular officer, to seize and detain such ship, and to bring her for adjudication before the High Court of Admiralty in *England* or *Ireland*, or any court having Admiralty jurisdiction in Her Majesty's dominions; and if such court is of opinion that such use or attempt at use has taken place, it shall pronounce such ship, with her tackle, apparel, and furniture, to be forfeited to Her Majesty, and may award such portion of the proceeds arising from the sale of such ship as it may think just to the officer so bringing in the same for adjudication.

Certificate of Ship Lost or ceasing to be British to be delivered up.

53. If any registered ship is either actually or constructively lost, taken by the enemy, burnt, or broken up, or if, by reason of a transfer to any persons not qualified to be owners of *British* ships, or of any other matter or thing, any such ship as aforesaid ceases to be a *British* ship, every person who at the time of the occurrence of any of the aforesaid events owns such ship or any share therein shall, immediately upon obtaining knowledge of any such occurrence, if no notice thereof has already been

given to the registrar at the port of registry of such ship, give such notice to him, and he shall make an entry thereof in his register book; and, except in cases where the certificate of registry is lost or destroyed, the master of every ship so circumstanced as aforesaid shall immediately, if such event occurs in port, but if the same occurs elsewhere, then within ten days after his arrival in port, deliver the certificate of registry of such ship to the registrar, or, if there be no registrar, to the *British* consular officer at such port, and such registrar, if he is not himself the registrar of her port of registry, or such *British* consular officer, shall forthwith forward the certificate so delivered to him to the registrar of the port of registry of the ship; and every owner and master who, without reasonable cause, makes default in obeying the provisions of this section shall for each offence incur a penalty not exceeding one hundred pounds. (As to the restrictions on the re-registration of abandoned ships, see Merchant Shipping Act, 1873, 36 and 37 Vict., cap. 85, sec. 6, *post.*)

Provisional Certificate for Ship becoming vested in British Owners at Foreign Port.

54. If any ship becomes the property of persons qualified to be owners of *British* ships at any foreign port, the *British* consular officer resident at such port may grant the master of such ship, upon his application, a provisional certificate, stating—

The name of the ship.

The time and place of her purchase, and the names of her purchasers.

The name of her master.

The best particulars as to her tonnage, build, and description that he is able to obtain.

And he shall forward a copy of such certificate, at the first convenient opportunity, to the Commissioners of Customs[1] in *London.* The certificate so granted shall possess the same force as a certificate of registry until the expiration of six months, or until such earlier time as the ship arrives at some port where there is a *British* registrar; but upon the expiration of such period, or upon arrival at such port, shall be void to all intents.

TRANSFERS AND TRANSMISSIONS.

Transfer of Ships or Shares therein.

55. A registered ship or any share therein, when disposed of to persons qualified to be owners of *British* ships, shall be transferred by bill of sale; and such bill of sale shall contain such description of the ship as is contained in the certificate of the surveyor, or such other description as may be sufficient to identify the ship to the satisfaction of the registrar, and shall be according to the form marked E. in the Schedule hereto, or as near thereto as circumstances permit, and shall be executed by the transferrer in the presence of, and be attested by, one or more witnesses.

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[1] Now the Registrar-General of Shipping and Seamen, Merchant Shipping Act, 1872, 35 and 36 Vict., cap. 73, sec. 4, *post.*

Declaration to be made by Transferee.

56. No individual shall be entitled to be registered as transferee of a ship or any share therein until he has made a declaration in the form marked F. in the Schedule hereto, stating his qualification to be registered as owner of a share in a *British* ship, and containing a denial similar to the denial hereinbefore required to be contained in a declaration of ownership by an original owner; and no body corporate shall be entitled to be registered as transferee of a ship or any share therein until the secretary or other duly appointed public officer of such body corporate has made a declaration in the form marked G. in the Schedule hereto, stating the name of such body corporate, and such circumstances of its constitution and business as may prove it to be qualified to own a *British* ship, and containing a denial similar to the denial hereinbefore required to be contained in a declaration of ownership made on behalf of a body corporate. In the case of an individual, the above declaration shall be made, if he reside within five miles of the custom-house of the port of registry, in the presence of the registrar, but if beyond that distance, in the presence of any registrar, or of any justice of the peace; in the case of a body corporate, the declaration shall be made in the presence of the registrar of the port of registry.

Registration of Transfer.

57. Every bill of sale for the transfer of any registered ship, or of any share therein, when duly executed, shall be produced to the registrar of the port at which the ship is registered, together with the declaration hereinbefore required to be made by a transferee; and the registrar shall thereupon enter in the register book the name of the transferee as owner of the ship or share comprised in such bill of sale, and shall endorse on the bill of sale the fact of such entry having been made, with the date and hour thereof; and all bills of sale of any ship or shares in a ship shall be entered in the register book in the order of their production to the registrar.

Transmission of Shares by Death, Bankruptcy, or Marriage.

58. If the property in any ship or in any share therein becomes transmitted in consequence of the death or bankruptcy or insolvency of any registered owner, or in consequence of the marriage of any female registered owner, or by any lawful means other than by a transfer according to the provisions of this Act, such transmission shall be authenticated by a declaration of the person to whom such property has been transmitted, made in the form marked H. in the Schedule hereto, and containing the several statements hereinbefore required to be contained in the declaration of a transferee, or as near thereto as circumstances permit, and, in addition, a statement describing the manner in which and the party to whom such property has been transmitted; and such declaration shall be made and subscribed, if the declarant resides at or within five miles of the custom-house of the port of registry, in the presence of the registrar, but if beyond that distance, in the presence of any registrar or of any justice of the peace.

Proof of Transmission by Bankruptcy, Marriage, Will, or on Intestacy.

59. If such transmission has taken place by virtue of the bankruptcy or insolvency of any registered owner, the said declaration shall be accompanied by such evidence as may for the time being be receivable in courts of justice as proof of the title of parties claiming under any bankruptcy or insolvency; and if such transmission has taken place by virtue of the marriage of a female owner, the said declaration shall be accompanied by a copy of the register of such marriage, or other legal evidence of the celebration thereof, and shall declare the identity of the said female owner; and if such transmission has taken place by virtue of any testamentary instrument or by intestacy, then in *England, Wales,* and *Ireland* the said declaration shall be accompanied by the probate of the will or the letters of administration, or an official extract therefrom, and in *Scotland* or in any *British* possession by the will or any copy thereof that may be evidence by the laws of *Scotland* or of such possession, or by letters of administration or any copy thereof, or by such other document as may by the laws of *Scotland* or of such possession be receivable in the courts of judicature thereof as proof of the person entitled upon an intestacy.

Registration of Transmitted Share.

60. The registrar, upon the receipt of such declaration, so accompanied as aforesaid, shall enter the name of the person or persons entitled under such transmission in the register book as owner or owners of the ship or share therein in respect of which such transmission has taken place; and such persons, if more than one, shall, however numerous, be considered as one person only as regards the rule hereinbefore contained relating to the number of persons entitled to be registered as owners.

Registrar to Retain certain Evidence.

61. Of the documents hereby required to be produced to the registrar, he shall retain in his possession the following; that is to say, the surveyor's certificate, the builder's certificate, the copy of the condemnation, and all declarations of ownership.

Unqualified Owner entitled by Transmission may apply to Court for Sale of Ship.

62. Whenever any property in a ship or share in a ship becomes vested by transmission on the death of any owner, or on the marriage of any female owner, in any person not qualified to be the owner of *British* ships, it shall be lawful; if such ship is registered in *England* or *Ireland*, for the Court of Chancery, if in *Scotland*, for the Court of Session, or if in any *British* possession, for any court possessing the principal civil jurisdiction within such possession, upon an application made by or on behalf of such unqualified person, to order a sale to be made of the property so transmitted, and to direct the proceeds of such sale, after deducting the expenses thereof, to be paid to the person entitled under such transmission, or otherwise as the court may direct; and it shall be in the discretion of

any such court as aforesaid to make or refuse any such order for sale, and to annex thereto any terms or conditions, and to require any evidence in support of such application it may think fit, and generally to act in the premises in such manner as the justice of the case requires.

Order to be made by Court.

63. Every order for a sale made by such court as aforesaid shall contain a declaration vesting the right to transfer the ship or share so to be sold in some person or persons named by the court, and such nominee or nominees shall thereupon be entitled to transfer such ship or share in the same manner, and to the same extent, as if he or they were the registered owner or owners of the same; and every registrar shall obey the requisition of such nominee or nominees as aforesaid in respect of any transfer to the same extent as he would be compellable to obey the requisition of any registered owner or owners of such ship or share.

Limit of Time for Application.

64. Every such application as aforesaid for sale shall be made within four weeks after the occurrence of the event on which such transmission has taken place, or within such further time as such court as aforesaid may allow, such time not in any case to exceed the space of one year from the date of such occurrence as aforesaid; and in the event of no such application being made within such period as aforesaid, or of such court refusing to accede thereto, the ship or share so transmitted shall thereupon be forfeited in manner hereinafter directed with respect to interests acquired by unqualified owners in ships using a *British* flag and assuming the *British* character.

Power of Courts to Prohibit Transfers.

65. It shall be lawful in *England* or *Ireland* for the Court of Chancery, in *Scotland* for the Court of Session, in any *British* possession for any court possessing the principal civil jurisdiction within such possession, without prejudice to the exercise of any other power such court may possess, upon the summary application of any interested person, made either by petition or otherwise, and either *ex parte* or upon service of notice on any other person, as the court may direct, to issue an order prohibiting for a time to be named in such order any dealing with such ship or share; and it shall be in the discretion of such court to make or refuse any such order, and to annex thereto any terms or conditions it may think fit, and to discharge such order when granted, with or without costs, and generally to act in the premises in such manner as the justice of the case requires; and every registrar, without being made a party to the proceedings, upon being served with such order, or an official copy thereof, shall obey the same. (Shares in shipping are within the Trustee Act, 1850; see 18 and 19 Vict., cap. 91, sec. 10, *post.*)

MORTGAGES.

Mortgages of Ships and Shares therein.

66. A registered ship or any share therein may be made a security for a loan or other valuable consideration; and the instrument creating such

security, hereinafter termed a "mortgage," shall be in the form marked I. in the Schedule hereto, or as near thereto as circumstances permit; and on the production of such instrument, the registrar of the port at which the ship is registered shall record the same in the register book.

Mortgages to be Registered in Order of Time of Production.

67. Every such mortgage shall be recorded by the registrar in the order of time in which the same is produced to him for that purpose; and the registrar shall, by memorandum under his hand, notify on the instrument of mortgage that the same has been recorded by him, stating the date and hour of such record.

Entry of Discharge of Mortgage.

68. Whenever any registered mortgage has been discharged, the registrar shall, on the production of the mortgage deed, with a receipt for the mortgage money endorsed thereon, duly signed and attested, make an entry in the register book to the effect that such mortgage has been discharged; and upon such entry being made, the estate, if any, which passed to the mortgagee shall vest in the same person or persons in whom the same would, having regard to intervening acts and circumstances, if any, have vested if no such mortgage had ever been made.

Priority of Mortgages.

69. If there is more than one mortgage registered of the same ship or share therein, the mortgagees shall, notwithstanding any express, implied, or constructive notice, be entitled in priority one over the other according to the date at which each instrument is recorded in the register book, and not according to the date of each instrument itself.

Mortgagee not to be deemed Owner.

70. A mortgagee shall not by reason of his mortgage be deemed to be the owner of a ship or any share therein, nor shall the mortgager be deemed to have ceased to be owner of such mortgaged ship or share, except in so far as may be necessary for making such ship or share available as a security for the mortgage debt.

Mortgagee to have Power of Sale.

71. Every registered mortgagee shall have power absolutely to dispose of the ship or share in respect of which he is registered, and to give effectual receipts for the purchase-money; but if there are more persons than one registered as mortgagees of the same ship or share, no subsequent mortgagee shall, except under the order of some court capable of taking cognisance of such matters, sell such ship or share without the concurrence of every prior mortgagee.

Rights of Mortgagee not affected by any Act of Bankruptcy of Mortgager.

72. No registered mortgage of any ship or of any share therein shall be affected by any act of bankruptcy committed by the mortgager after the

date of the record of such mortgage, notwithstanding such mortgager at the time of his becoming bankrupt may have in his possession and disposition, and be reputed owner of, such ship or share thereof; and such mortgage shall be preferred to any right, claim, or interest in such ship or any share thereof which may belong to the assignees of such bankrupt.

Transfer of Mortgages.

73. A registered mortgage of any ship or share in a ship may be transferred to any person, and the instrument creating such transfer shall be in the form marked K. in the Schedule hereto; and on the production of such instrument the registrar shall enter in the register book the name of the transferee as mortgagee of the ship or shares therein mentioned, and shall by memorandum under his hand record on the instrument of transfer that the same has been recorded by him, stating the date and hour of such record.

Transmission of Interest of Mortgagee by Death, Bankruptcy, or Marriage.

74. If the interest of any mortgagee in any ship or in any share therein becomes transmitted in consequence of death, bankruptcy, or insolvency, or in consequence of the marriage of any female mortgagee, or by any lawful means other than by a transfer according to the provisions of this Act, such transmission shall be authenticated by a declaration of the person to whom such interest has been transmitted, made in the form marked L. in the Schedule hereto, and containing a statement describing the manner in which and the party to whom such property has been transmitted; and such declaration shall be made and subscribed, if the declarant resides at or within five miles of the custom-house of the port of registry, in the presence of the registrar, but if beyond that distance, in the presence of any registrar or of any justice of the peace, and shall be accompanied by such evidence as is hereinbefore required to authenticate a corresponding transmission of property from one registered owner to another.

Entry of Transmitted Mortgage.

75. The registrar, upon the receipt of such declaration and the production of such evidence as aforesaid, shall enter the name of the person or persons entitled under such transmission in the register book as mortgagee or mortgagees of the ship or share in respect of which such transmission has taken place.

CERTIFICATES OF MORTGAGE AND SALE.

Powers of Mortgage and Sale may be conferred by Certificate.

76. Any registered owner, if desirous of disposing by way of mortgage or sale of the ship or share in respect of which he is registered at any place out of the country or possession in which the port of registry of such ship is situate, may apply to the registrar, who shall thereupon enable him to do so by granting such certificates as are hereinafter mentioned, to be called respectively certificates of mortgage or certificates of sale, according as they purport to give a power to mortgage or a power to sell.

Requisites for Certificates of Mortgage and Sale.

77. Previously to any certificate of mortgage or sale being granted, the applicant shall state to the registrar, to be by him entered in the register book, the following particulars; (that is to say),

(1.) The names of the persons by whom the power mentioned in such certificate is to be exercised, and in the case of a mortgage, the maximum amount of charge to be created, if it is intended to fix any such maximum, and in the case of a sale, the minimum price at which a sale is to be made, if it is intended to fix any such minimum.

(2.) The specific place or places where such power is to be exercised, or if no place be specified, then that it may be exercised anywhere, subject to the provisions hereinafter contained.

(3.) The limit of time within which such power may be exercised.

Restrictions on Certificates of Mortgage and Sale.

78. No certificate of mortgage or sale shall be granted so as to authorise any mortgage or sale to be made—

At any place within the United Kingdom, if the port of registry of the ship be situate in the United Kingdom; or at any place within the same *British* possession, if the port of registry is situate within a *British* possession; or

By any person not named in the certificate.

Forms of Certificates of Mortgage and Sale.

79. Certificates of mortgage and sale shall be in the forms marked respectively M. and N. in the Schedule hereto, and shall contain a statement of the several particulars hereinbefore directed to be entered in the register book, and in addition thereto an enumeration of any registered mortgages or certificates of mortgages or sale affecting the ships or shares in respect of which such certificates are given.

Rules as to Certificates of Mortgage.

80. The following rules shall be observed as to certificates of mortgage; (that is to say),

(1.) The power shall be exercised in conformity with the directions contained in the certificate.

(2.) A record of every mortgage made thereunder shall be endorsed thereon by a registrar or *British* consular officer.

(3.) No mortgage *bonâ fide* made thereunder shall be impeached by reason of the person by whom the power was given dying before the making of such mortgage.

(4.) Whenever the certificate contains a specification of the place or places at which, and a limit of time, not exceeding twelve months, within which the power is to be exercised, no mortgage *bonâ fide* made to a mortgagee without notice shall be impeached by reason of the bankruptcy or insolvency of the person by whom the power was given.

(5.) Every mortgage which is so registered as aforesaid on the certificate shall have priority over all mortgages of the same ship or share created subsequently to the date of the entry of the certificate in the register book; and if there be more mortgages than one so endorsed, the respective mortgagees claiming thereunder shall, notwithstanding any express, implied, or constructive notice, be entitled one before the other according to the date at which a record of each instrument is endorsed on the certificate, and not according to the date of the instrument creating the mortgage.

(6.) Subject to the foregoing rules, every mortgagee whose mortgage is registered on the certificate shall have the same rights and powers and be subject to the same liabilities as he would have had and been subject to if his mortgage had been registered in the register book instead of on the certificate.

(7.) The discharge of any mortgage so registered on the certificate may be endorsed thereon by any registrar or *British* consular officer, upon the production of such evidence as is hereby required to be produced to the registrar on the entry of the discharge of a mortgage in the register book; and upon such endorsement being made, the estate, if any, which passed to the mortgagee shall vest in the same person or persons in whom the same would, having regard to intervening acts and circumstances, if any, have vested if no such mortgage had been made.

(8.) Upon the delivery of any certificate of mortgage to the registrar by whom it was granted, he shall, after recording in the register book, in such manner as to preserve its priority, any unsatisfied mortgage registered thereon, cancel such certificate, and enter the fact of such cancellation in the register book; and every certificate so cancelled shall be void to all intents.

Rules as to Certificates of Sale.

81. The following rules shall be observed as to certificates of sales; (that is to say),

(1.) No such certificate shall be granted except for the sale of an entire ship.

(2.) The power shall be exercised in conformity with the directions contained in the certificate.

(3.) No sale *bonâ fide* made to a purchaser for valuable consideration shall be impeached by reason of the person by whom the power was given dying before the making of such sale.

(4.) Whenever the certificate contains a specification of the place or places at which, and a limit of time, not exceeding twelve months, within which, the power is to be exercised, no sale *bonâ fide* made to a purchaser for valuable consideration without notice shall be impeached by reason of the bankruptcy or insolvency of the person by whom the power was given.

(5.) Any transfer made to a person qualified to be the owner of *British* ships shall be by bill of sale in the form hereinbefore mentioned, or as near thereto as circumstances permit.

(6.) If the ship is sold to a party qualified to hold *British* ships, the

ship shall be registered anew; but notice of all mortgages enumerated on the certificate of sale shall be entered in the register book.

(7.) Previously to such registry anew, there shall be produced to the registrar required to make the same the bill of sale by which the ship is transferred, the certificate of sale, and the certificate of registry of such ship.

(8.) Such last-mentioned registrar shall retain the certificates of sale and registry, and after having endorsed on both of such instruments an entry of the fact of a sale having taken place, shall forward the said certificates to the registrar of the port appearing on such certificates to be the former port of registry of the ship, and such last-mentioned registrar shall thereupon make a memorandum of the sale in his register book, and the registry of the ship in such book shall be considered as closed, except so far as relates to any unsatisfied mortgages or existing certificates of mortgage entered therein.

(9.) On such registry anew the description of the ship contained in her original certificate of registry may be transferred to the new register book without her being re-surveyed, and the declaration to be made by the purchaser shall be the same as would be required to be made by an ordinary transferee.

(10.) If the ship is sold to a party not qualified to be the owner of a *British* ship, the bill of sale by which the ship is transferred, the certificate of sale, and the certificate of registry shall be produced to some registrar or consular officer, who shall retain the certificates of sale and registry, and having endorsed thereon the fact of such ship having been sold to persons not qualified to be owners of *British* ships, shall forward such certificates to the registrar of the port appearing on the certificate of registry to be the port of registry of such ship; and such last-mentioned registrar shall thereupon make a memorandum of the sale in his register book, and the registry of the ship in such book shall be considered as closed, except so far as relates to any unsatisfied mortgages or existing certificates of mortgage entered therein.

(11.) If, upon a sale being made to an unqualified person, default is made in the production of such certificates as are mentioned in the last rule, such unqualified person shall be considered by *British* law as having acquired no title to or interest in the ship; and further, the party upon whose application such certificate was granted, and the persons exercising the power, shall each incur a penalty not exceeding one hundred pounds.

(12.) If no sale is made in conformity with the certificate of sale, such certificate shall be delivered to the registrar by whom the same was granted; and such registrar shall thereupon cancel it, and enter the fact of such concellation in the register book; and every certificate so cancelled shall be void to all intents.

Power of Commissioners of Customs in case of Loss of Certificate of Mortgage or Sale.

82. Upon proof at any time to the satisfaction of the Commissioners of Customs that any certificate of mortgage or sale is lost or so obliterated

as to be useless, and that the powers thereby given have never been exercised, or if they have been exercised, then upon proof of the several matters and things that have been done thereunder, it shall be lawful for the registrar, with the sanction of the said Commissioners, as circumstances may require, either to issue a new certificate, or to direct such entries to be made in the register book, or such other matter or thing to be done, as might have been made or done if no such loss or obliteration had taken place.

Revocation of Certificates of Mortgage and Sale.

83. The registered owner for the time being of any ship or share therein in respect of which a certificate of mortgage or sale has been granted, specifying the place or places where the power thereby given is to be exercised, may, by an instrument under his hand made in the form O. in the Schedule hereto, or as near thereto as circumstances permit, authorise the registrar by whom such certificate was granted to give notice to the registrar or consular officer, registrars or consular officers, at such place or places, that such certificate is revoked; and notice shall be given accordingly; and all registrars or consular officers receiving such notice shall record the same, and shall exhibit the same to all persons who may apply to them for the purpose of effecting or obtaining a mortgage or transfer under the said certificate of mortgage or sale; and after such notice has been so recorded, the said certificate shall, so far as concerns any mortgage or sale to be thereafter made at such place, be deemed to be revoked and of no effect; and every registrar or consular officer recording any such notice shall thereupon state to the registrar by whom the certificate was granted, whether any previous exercise of the power to which such certificate refers has taken place.

REGISTRY ANEW AND TRANSFER OF REGISTRY.

Alteration in Ship to be Registered.

84. Whenever any registered ship is so altered as not to correspond with the particulars relating to her tonnage or description contained in the register book, then, if such alteration is made at a port where there is a registrar, the registrar of such port, but if made elsewhere, the registrar of the first port having a registrar at which the ship arrives after her alteration, shall, on application made to him, and on the receipt of a certificate from the proper surveyor specifying the nature of such alteration, either retain the old certificate of registry and grant a new certificate of registry containing a description of the ship as altered, or endorse on the existing certificate a memorandum of such alteration, and subscribe his name to such endorsement; and the registrar to whom such application as aforesaid is made, if he is the registrar of the port of registry of the ship, shall himself enter in his register book the particulars of the alteration so made, and the fact of such new certificate having been granted or endorsement having been made on the existing certificate; but if he is not such last-mentioned registrar, he shall forthwith report such particulars and facts as aforesaid, accompanied by the old certificate of registry in cases where a new one has been granted, to the registrar of the port of registry of the

ship, who shall retain such old certificate (if any), and enter such particulars and facts in his register book accordingly.

On Alteration, Registry anew may be required.

85. When the registrar to whom application is made in respect of any such alteration as aforesaid is the registrar of the port of registry, he may, if he thinks fit, instead of registering such alteration, require such ship to be registered anew in manner hereinbefore directed on the first registry of a ship; and if he is not such registrar as lastly hereinbefore mentioned, he may nevertheless require such ship to be registered anew, but he shall in such last-mentioned case grant a provisional certificate, or make a provisional endorsement of the alteration made in manner hereinbefore directed in cases where no registry anew is required, taking care to add to such certificate or endorsement a statement that the same is made provisionally, and to insert in his report to the registrar of the port of registry of the ship a like statement.

Grant of Provisional Certificate in respect of Alteration.

86. Every such provisional certificate, or certificate provisionally endorsed, shall, within ten days after the first subsequent arrival of the ship at her port of discharge in the United Kingdom, if registered in the United Kingdom, or, if registered elsewhere, at her port of discharge in the *British* possession within which her port of registry is situate, be delivered up to the registrar thereof, who shall thereupon cause such ship to be registered anew in the same manner in all respects as hereinbefore required on the first registry of any ship.

Consequence of Omission to Register anew.

87. On failure of such registry anew of any ship or registry of alteration of any ship so altered as aforesaid, such ship shall be deemed not duly registered, and shall no longer be recognised as a *British* ship.

On Change of Owners, Registry anew may be granted if required.

88. If upon any change of ownership in any ship the owner or owners desire to have such ship registered anew, although such registry anew is not required by this Act, it shall be lawful for the registrar of the port at which such ship is already registered, on the delivery up to him of the existing certificate of registry, and on the other requisites to registry, or such of them as the registrar thinks material, being duly complied with, to make such registry anew, and grant a certificate thereof.

Registry may be Transferred from Port to Port.

89. The registry of any ship may be transferred from one port to another upon the application of all parties appearing on the register to be interested in such ship, whether as owners or mortgagees, such application to be expressed by a declaration in writing, made and subscribed, if the party so required to make and subscribe the same resides at or within five

miles of the custom-house of the port from which such ship is to be transferred, in the presence of the registrar of such port, but if beyond that distance, in the presence of any registrar or of any justice of the peace.

Manner of Transfer of Registry.

90. Upon such application being made as is hereinbefore mentioned, and upon the delivery to him of the certificate of registry, the registrar of the port at which such ship is already registered shall transmit to the registrar of the port at which such ship is intended to be registered notice of such application having been made to him, together with a true copy of all particulars relating to such ship, and the names of all the parties appearing by his book to be interested as owners or mortgagees in such ship; and such last-mentioned registrar shall, upon the receipt of such notice, enter all such particulars and names in his book of registry, and grant a fresh certificate of registry, and thenceforth such ship shall be considered as registered at and belonging to such last-mentioned port, and the name of such last-mentioned port shall be substituted on the stern of such ship in lieu of the name of the port previously appearing thereon. (As to delivery up of the old certificate, see the Merchant Shipping Act Amendment Act, 1855, 18 and 19 Vict., cap. 91, sec. 12, *post.*)

Transfer of Registry not to affect Rights of Owners.

91. The transfer of the registry of any ship in manner aforesaid shall not in any way affect the rights of the several persons interested either as owners or mortgagees in such ship, but such rights shall in all respects be maintained and continue in the same manner as if no such transfer had been effected.

REGISTRY MISCELLANEOUS.

Inspection of Register Book.

92. Every person may, upon payment of a fee to be fixed by the Commissioners of Customs [1] not exceeding one shilling, have access to the register book for the purpose of inspection at any reasonable time during the hours of official attendance of the registrar.

Indemnity to Registrar.

93. No registrar shall be liable to damages or otherwise for any loss accruing to any person by reason of any act done or default made by him in his character of registrar, unless the same has happened through his neglect or wilful act.

Return to be made by Registrars to Commissioners of Customs.

94. Every registrar in the United Kingdom shall at the expiration of every month, and every other registrar shall without delay, or at such

[1] Now the Registrar-General of Shipping and Seamen, Merchant Shipping Act, 1872, 35 and 36 Vict., cap. 73, sec. 4, *post.*

stated times as may be fixed by the Commissioners of Customs,[1] transmit to the custom-house in *London* a full return, in such form as they may direct, of all registries, transfers, transmissions, mortgages, and other dealings with ships which have been registered by or communicated to them in their character of registrars, and the names of the persons who have been concerned in the same, and such other particulars as may be directed by the said Commissioners.[1]

Application of Fees.

95. All fees authorised to be taken under the second part of this Act shall, if taken in any part of the United Kingdom, be applied in payment of the general expenses of carrying into effect the purposes of such second part, or otherwise as the Treasury may direct; but if taken elsewhere, shall be disposed of in such way as the Executive Government of the *British* possession in which they are taken may direct.

Commissioners of Customs to provide, and, with Consent of Board of Trade, may alter Forms and Issue Instructions.

96. The Commissioners of Customs[1] shall cause the several forms required or authorised to be used by the second part of this Act, and contained in the Schedule hereto, to be supplied to all registrars within Her Majesty's dominions for distribution to the several persons requiring to use the same, either free of charge, or at such moderate prices as they may from time to time direct; and the said Commissioners, with the consent of the Board of Trade, may from time to time make such alterations in the forms contained in the Schedule hereto as it may deem requisite, but shall, before issuing any altered form, give such public notice thereof as may be necessary in order to prevent inconvenience; and the said Commissioners may also, with such consent as aforesaid, for the purpose of carrying into effect the provisions contained in the second part of this Act, give such instructions as to the manner of making entries in the register book, as to the execution and attestation of powers of attorney, as to any evidence to be required for identifying any persons, and generally as to any act or thing to be done in pursuance of the second part of this Act, as they may think fit. (As to the effect of using other forms, see Merchant Shipping Act Amendment Act, 1855, 18 and 19 Vict., cap. 91, sec. 11, *post.*)

Power to Registrar to Dispense with Declarations and other Evidence.

97. Whenever in any case in which, under the second part of this Act, any person is required to make a declaration on behalf of himself or of any body corporate, or any evidence is required to be produced to the registrar, it is shown to the satisfaction of the registrar that, from any reasonable cause, such person is unable to make the declaration, or that such evidence cannot be produced, it shall be lawful for the registrar, with the sanction of the Commissioners of Customs,[1] and upon the production of such other evidence, and subject to such terms as they may think fit, to dispense with any such declaration or evidence.

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[1] Now the Registrar-General of Shipping and Seamen, Merchant Shipping Act, 1872, 35 and 36 Vict., cap. 73, sec. 4, *post.*

Power for Commissioners or Governor in Special Cases to grant a Pass to a Ship not Registered.

98. In cases where it appears to the Commissioners of Customs,[1] or to the Governor or other person administering the government of any *British* possession, that by reason of special circumstances it would be desirable that permission should be granted to any *British* ship to pass, without being previously registered, from one port or place in Her Majesty's dominions to any other port or place within the same, it shall be lawful for such Commissioners or Governor or other person to grant a pass accordingly; and such pass shall for the time, and within the limits therein mentioned, have the same effect as a certificate of registry.

Provision for Cases of Infancy or other Incapacity.

99. If any person interested in any ship or any share therein is, by reason of infancy, lunacy, or other inability, incapable of making any declaration, or doing anything required or permitted by this Act to be made or done by such incapable person in respect of registry, then the guardian or committee, if any, of such incapable person, or, if there be none, any person appointed by any court or judge possessing jurisdiction in respect of the property of incapable persons, upon the petition of any person on behalf of such incapable person, or of any other person interested in the making such declaration or doing such thing, may make such declaration, or a declaration as nearly corresponding thereto as circumstances permit, and do such thing in the name and on behalf of such incapable person; and all acts done by such substitute shall be as effectual as if done by the person for whom he is substituted.

Liabilities of Owners.

100. Whenever any person is beneficially interested, otherwise than by way of mortgage, in any ship or share therein, registered in the name of some other person as owner, the person so interested shall, as well as the registered owner, be subject to all pecuniary penalties imposed by this or by any other Act on owners of ships or shares therein, so nevertheless that proceedings may be taken for the enforcement of any such pecuniary penalties against both or either of the aforesaid parties, with or without joining the other of them.

FORGERY.

Punishment for Forgery.

101. Any person who forges, assists in forging, or procures to be forged, fraudulently alters, assists in fraudulently altering, or procures to be fraudulently altered, any register book, certificate of surveyor, certificate of registry, declaration of ownership, bill of sale, instrument of mortgage, certificate of mortgage or sale, or any entry or endorsement required by the second part of this Act to be made in or on any of the above documents, shall for every such offence be deemed to be guilty of felony.

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[1] Now the Registrar-General of Shipping and Seamen, Merchant Shipping Act, 1872, 35 and 36 Vict., cap. 73, sec. 4, *post*.

NATIONAL CHARACTER.

National Character of Ship to be declared before Clearance.

102. No officer of customs shall grant a clearance or transire for any ship until the master of such ship has declared to such officer the name of the nation to which he claims that she belongs, and such officer shall thereupon inscribe such name on the clearance or transire; and if any ship attempts to proceed to sea without such clearance or transire, any such officer may detain her until such declaration is made.

Penalties.

103. The offences hereinafter mentioned shall be punishable as follows:—

For unduly assuming a British Character.

(1.) If any person uses the *British* flag and assumes the *British* national character on board any ship owned in whole or in part by any persons not entitled by law to own *British* ships, for the purpose of making such ship appear to be a *British* ship, such ship shall be forfeited to Her Majesty, unless such assumption has been made for the purpose of escaping capture by an enemy or by a foreign ship of war in exercise of some belligerent right; and in any proceeding for enforcing any such forfeiture, the burden of proving a title to use the *British* flag and assume the *British* national character shall lie upon the person using and assuming the same.

For Concealment of British or Assumption of Foreign Character.

(2.) If the master or owner of any *British* ship does or permits to be done any matter or thing, or carries or permits to be carried any papers or documents, with intent to conceal the *British* character of such ship from any person entitled by *British* law to inquire into the same, or to assume a foreign character, or with intent to deceive any such person as lastly hereinbefore mentioned, such ship shall be forfeited to Her Majesty; and the master, if he commits or is privy to the commission of the offence, shall be guilty of a misdemeanour.

For acquiring Ownership if unqualified.

(3.) If any unqualified person, except in the case of such transmitted interests as are hereinbefore mentioned, acquires as owner any interest, either legal or beneficial, in a ship using a *British* flag and assuming the *British* character, such interest shall be forfeited to Her Majesty.

For False Declaration of Ownership.

(4.) If any person, on behalf of himself or any other person or body of persons, wilfully makes a false declaration touching the qualification of himself or such other person or body of persons to own

British ships or any shares therein, the declarant shall be guilty of a misdemeanour; and the ship or share in respect of which such declaration is made, if the same has not been forfeited under the foregoing provision, shall, to the extent of the interest therein of the person making the declaration, and, unless it is shown that he had no authority to make the same, of the parties on behalf of whom such declaration is made, be forfeited to Her Majesty.

And in order that the above provisions as to forfeitures may be carried into effect, it shall be lawful for any commissioned officer on full pay in the military or naval service of Her Majesty, or any *British* officer of customs, or any *British* consular officer, to seize and detain any ship which has, either wholly or as to any share therein, become subject to forfeiture as aforesaid, and to bring her for adjudication before the High Court of Admiralty in *England* or *Ireland*, or any court having Admiralty jurisdiction in Her Majesty's dominions; and such court may thereupon make such order in the case as it may think fit, and may award to the officer bringing in the same for adjudication such portions of the proceeds of the sale of any forfeited ship or share as it may think right. (False declaration of ownership is a misdemeanour; see Merchant Shipping Act Amendment Act, 1855, 18 and 19 Vict., cap. 91, sec. 9, *post.*)

Officer not Liable for any Seizure made on Reasonable Grounds.

104. No such officer as aforesaid shall be responsible, either civilly or criminally, to any person whomsoever, in respect of the seizure or detention of any ship that has been seized or detained by him in pursuance of the provisions herein contained, notwithstanding that such ship is not brought in for adjudication, or, if so brought in, is declared not to be liable to forfeiture, if it is shown, to the satisfaction of the judge or court before whom any trial relating to such ship or such seizure or detention is held, that there were reasonable grounds for such seizure or detention; but if no such grounds are shown, such judge or court may award payment of costs and damages to any party aggrieved, and make such other order in the premises as it thinks just.

Penalty for Carrying improper Colours.

105. If any colours usually worn by Her Majesty's ships, or any colours resembling those of Her Majesty, or any distinctive national colours, except the red ensign usually worn by merchant ships, or except the union jack with a white border, or if the pendant usually carried by Her Majesty's ships, or any pendant in anywise resembling such pendant, are or is hoisted on board any ship or boat belonging to any subject of Her Majesty without warrant for so doing from Her Majesty or from the Admiralty, the master of such ship or boat, or the owner thereof, if on board the same, and every other person hoisting or joining or assisting in hoisting the same, shall for every such offence incur a penalty not exceeding five hundred pounds; and it shall be lawful for any officer on full pay in the military or naval service of Her Majesty, or any *British* officer of the customs, or any *British* consular officer, to board any such ship or boat, and to take away any such jack, colours, or pendant; and such jack, colours, or pendant shall be forfeited to Her Majesty.

Effect of Declaration in the Act that a Ship shall not be recognised as a British Ship.

106. Whenever it is declared by this Act that a ship belonging to any person or body corporate qualified according to this Act to be owners of *British* ships shall not be recognised as a *British* ship, such ship shall not be entitled to any benefits, privileges, advantages, or protection usually enjoyed by *British* ships, and shall not be entitled to use the *British* flag or assume the *British* national character; but, so far as regards the payment of dues, the liability to pains and penalties, and the punishment of offences committed on board such ship or by any person belonging to her, such ship shall be dealt with in the same manner in all respects as if she were a recognised *British* ship.

EVIDENCE.

Copies of Registers and Declarations to be admissible in Evidence, and to be primâ facie Proof of certain Things.

107. Every register of or declaration made in pursuance of the second part of this Act in respect of any *British* ship may be proved in any court of justice, or before any person having by law or by consent of parties authority to receive evidence, either by the production of the original or by an examined copy thereof, or by a copy thereof purporting to be certified under the hand of the registrar or other person having the charge of the original; which certified copies he is hereby required to furnish to any person applying at a reasonable time for the same, upon payment of one shilling for each such certified copy; and every such register and copy of a register, and also every certificate of registry of any *British* ship, purporting to be signed by the registrar or other proper officer, shall be received in evidence in any court of justice, or before any person having by law or by consent of parties authority to receive evidence as *primâ facie* proof of all the matters contained or recited in such register when the register of such copy is produced, and of all the matters contained in or endorsed on such certificate of registry, and purporting to be authenticated by the signature of a registrar, when such certificate is produced. (See section 15 of 18 and 19 Vict., cap. 91, *post.*)

SAVING CLAUSE.

Saving of 3 *and* 4 *Vict.*, c. 56, *relating to East Indian Ships.*

108. Nothing in this Act contained shall repeal or affect an Act passed in the session of Parliament holden in the third and fourth years of the reign of Her present Majesty, chapter fifty-six, intituled, *An Act further to regulate the trade of ships built and trading within the limits of the* East India *Company's charter.*

PART III.

MASTERS AND SEAMEN.

Application of Part III. of Act.

109. The various provisions of the third part of this Act shall have the following applications, unless the context or subject-matter requires a different application; (that is to say),

So much of the third part of this Act as relates to the delivery or transmission of lists of crews to the Registrar-General of Seamen shall apply to all fishing-vessels belonging to the United Kingdom, whether employed exclusively on the coasts of the United Kingdom or not; to all ships belonging to the *Trinity House*, or the Commissioners of Northern Lighthouses, constituted as hereinafter mentioned, or the Port of *Dublin* Corporation, and to all pleasure yachts, and to the owners, masters, and crews of such ships.

So much of the third part of this Act as relates to the delivery and transmission of lists of crews, and to the wages and effects of deceased seamen and apprentices, shall apply to all sea-going *British* ships, wherever registered, of which the crews are discharged or whose final port of destination is in the United Kingdom, and to the owners, masters, and crews of such ships.

So much of the third part of this Act as relates to the shipping and discharge of seamen in the United Kingdom shall apply to all sea-going *British* ships, wherever registered, and to the owners, masters, and crews of such ships.

So much of the third part of this Act as relates to seamen volunteering into the royal navy shall apply to all sea-going *British* ships, wherever registered, and to the owners, masters, and crews of such ships, wherever the same may be.

So much of the third part of this Act as relates to rights to wages and remedies for the recovery thereof; to the shipping and discharge of seamen in foreign ports; to leaving seamen abroad, and to the relief of seamen in distress in foreign ports; to the provisions, health, and accommodation of seamen; to the power of seamen to make complaints; to the protection of seamen from imposition; to discipline; to naval courts on the high seas and abroad; and to crimes committed abroad; shall apply to all ships registered in any of Her Majesty's dominions abroad, when such ships are out of the jurisdiction of their respective Governments, and to the owners, masters, and crews of such ships.

And the whole of the third part of this Act shall apply to all sea-going ships registered in the United Kingdom (except such as are exclusively employed in fishing on the coasts of the United Kingdom, and such as belong to the *Trinity House*, the Commissioners of Northern Lighthouses, or the Port of *Dublin* Corporation, and also except pleasure yachts), and also to all ships registered in any *British* posses-

sion, and employed in trading or going between any place in the United Kingdom and any place or places not situated in the possession in which such ships are registered, and to the owners, masters, and crews of such ships respectively, wherever the same may be. (See also Merchant Shipping Act Amendment Act, 1862, 25 and 26 Vict., cap. 63, sec. 13, *post.*)

LOCAL MARINE BOARDS.

Constitution of Local Marine Boards.

110. There shall be Local Marine Boards for carrying into effect the provisions of this Act under the superintendence of the Board of Trade at those seaports of the United Kingdom at which Local Marine Boards have heretofore been established, and at such other places as the Board of Trade appoints for this purpose; and each of such Local Marine Boards shall be constituted as follows; (that is to say), the mayor or provost and the stipendiary magistrate, or such of the mayors or provosts and stipendiary magistrates of the place (if more than one) as the Board of Trade appoints, shall be a member or members *ex officio;* the Board of Trade shall appoint four members from persons residing or having places of business at the port, or within seven miles thereof; and the owners of foreign-going ships and of home-trade passenger-ships registered at the port shall elect six members; and such elections as aforesaid shall take place on the twenty-fifth day of *January* one thousand eight hundred and fifty-seven, and on the twenty-fifth day of *January* in every third succeeding year, and such appointments as aforesaid shall take place within one month after such elections; and upon the conclusion of such month and the constitution of a new board, the functions of the then existing board shall cease, and the board consisting of the members then newly elected and appointed shall take its place; and any occasional vacancy caused in the intervals between the general elections and appointments, by death, resignation, disqualification, or otherwise, shall be filled up within one month after it occurs; and every person elected or appointed on an occasional vacancy shall continue a member until the next constitution of a new board; and the mayor or provost shall fix the place and mode of conducting all such elections as aforesaid, and also on occasional vacancies the day of election, and shall give at least ten days' notice thereof; and the Board of Trade shall have power to decide any questions raised concerning any such elections.

Qualification of Voters for Members of Local Marine Boards.

111. Owners of foreign-going ships and of home-trade passenger-ships registered at any seaport at which there is a Local Marine Board shall have votes at the election of members of such board as follows; (that is to say), every registered owner of not less than two hundred and fifty tons in the whole of such shipping shall at every election have one vote for each member for every two hundred and fifty tons owned by him, so that his votes for any one member do not exceed ten; and for the purpose of ascertaining the qualification of such electors the following rules shall be observed; (that is to say), in the case of a ship registered in the name of

one person, such person shall be deemed to be the owner, and in the case of a ship registered in distinct and several shares in the names of more persons than one, the tonnage shall be apportioned among the owners as nearly as may be in proportion to their respective shares, and each of such persons shall be deemed to be the owner of the tonnage so apportioned to him; and in the case of a ship or shares of a ship registered jointly without severance of interest in the names of more persons than one, the tonnage shall, if it is sufficient, either alone or together with other tonnage (if any) owned by such joint-owners, to give a qualification to each of them, be apportioned equally between the joint-owners, and each of such joint-owners shall be deemed to be the owner of the equal share so apportioned to him, but if it is not so sufficient, the whole of such tonnage shall be deemed to be owned by such one of the joint-owners resident or having a place of business at the port or within seven miles thereof as is first named on the register; and in making any such apportionment as aforesaid, any portion may be struck off so as to obtain a divisible amount; and the whole amount of tonnage so owned by each person, whether in ships or shares of or interests in ships, shall be added together, and, if sufficient, shall constitute his qualification.

List of such Voters to be made.

112. The Collector or Comptroller of Customs in every seaport of the United Kingdom at which there is a Local Marine Board shall, with the assistance of the Registrar-General of Seamen, on or before the twenty-fifth day of *December* in the year one thousand eight hundred and fifty-six, and in every third succeeding year, make out an alphabetical list of the persons entitled by virtue of this Act to vote at the electiom of members of such Local Marine Board, containing the Christian name, surname, and residence of each such person, and the number of votes to which he is entitled, and shall sign such list, and cause a sufficient number of copies thereof to be printed, and to be fixed on or near the doors of the custom-house at such seaport for two entire weeks next after such list has been made, and shall keep true copies of such list, and permit the same to be perused by any person, without payment of any fee, at all reasonable hours during such two weeks.

Revision of List of Voters.

113. The mayor or provost of every seaport at which there is a Local Marine Board, or such of them, if more than one, as is or are for the time being so appointed as aforesaid, shall, at least twenty days before the twenty-fifth day of *January* in the year one thousand eight hundred and fifty-seven, and in each succeeding third year, nominate two justices of the peace to revise the said lists; and such justices shall, between the eighth and fifteenth days of *January*, both inclusive, in the year in which they are so nominated, revise the said list at the custom-house of the port, or in some convenient place near thereto, to be hired, if necessary, by the said collector or comptroller, and shall give three clear days' notice of such revision by advertising the same in some local newspaper, and by affixing a notice thereof on or near to the door of such custom-house, and shall

make such revision by inserting in such list the name of every person who claims to be inserted therein, and gives proof satisfactory to the said revisors of his right to have his name so inserted, and by striking out therefrom the name of every person to the insertion of which an objection is made by any other person named in such list who gives proof satisfactory to the said revisors that the name of the person so objected to ought not to have been inserted therein; and the decision of the said revisors with respect to every such claim or objection shall be conclusive; and the said revisors shall immediately after such revision sign their names at the foot of the list so revised; and such list so revised shall be the register of voters at elections of members of the Local Marine Board of such seaport for three years from the twenty-fifth day of *January* then next ensuing inclusive to the twenty-fourth day of *January* inclusive in the third succeeding year; and the said revised list, when so signed, shall be delivered to such mayor or provost as aforesaid of the place, who shall, if necessary, cause a sufficient number of copies thereof to be printed, and shall cause a copy to be delivered to every voter applying for the same.

Registers to be Produced.

114. The said collector or comptroller, if required, shall, for the assistance of the said revisors in revising the said list, produce to them the books containing the register of ships registered at such seaport; and the Registrar-General of Seamen, if required, shall also produce or transmit to such revisors such certified extracts or returns from the books in his custody as may be necessary for the same purpose.

Expenses to be paid by Board of Trade.

115. The two justices aforesaid shall certify all expenses properly incurred by any such collector or comptroller as aforesaid in making and printing the said list and in the revision thereof, and the Board of Trade shall pay the same, and also all expenses properly incurred by any such mayor or provost as aforesaid in printing the same, or in elections taking place under this Act; and the said Board may disallow any items of any such expenses as aforesaid which it deems to have been improperly incurred.

Persons on Revised List qualified to Vote.

116. Every person whose name appears on such revised list, and no other person, shall be qualified to vote at the election of members of the Local Marine Board at such seaport to be held on the twenty-fifth day of *January* next after the revision of such list, and at any occasional election held at any time between that day and the next ordinary triennial election of the members of such board.

Qualification of Members of Local Marine Boards.

117. Every male person who is, according to such revised list of the voters at any seaport, entitled to a vote shall be qualified to be elected a member of the Local Marine Board of such seaport, and no other person shall be so qualified; and if any person elected as a member after such election ceases to be an owner of such quantity of tonnage as would entitle

him to a vote, he shall no longer continue to act or be considered as a member, and thereupon another member shall be elected in his place.

Error in Elections not to vitiate Acts done.

118. No act of any Local Marine Board shall be vitiated or prejudiced by reason of any irregularity in the election of any of its members, or of any error in the list of voters herein mentioned, or of any irregularity in the making or revising of such list, or by reason of any person who is not duly qualified as hereinbefore directed acting upon such board.

Minutes and Business of Local Marine Boards.

119. Every Local Marine Board shall keep minutes of its proceedings, and the same shall be kept in such mode (if any) as the Board of Trade prescribes; and such minutes, and all books or documents used or kept by any Local Marine Board, or by any examiners, shipping-masters, or other officers or servants under the control of any Local Marine Board, shall be open to the inspection of the Board of Trade and its officers; and every Local Marine Board shall make and send to the Board of Trade such reports and returns as it requires; but, subject as aforesaid, every Local Marine Board may regulate the mode in which its meetings are to be held and its business conducted. (See sec. 14 of 25 and 26 Vict., cap. 63, *post.*)

If any Local Marine Board fails to discharge its Duties, Board of Trade may assume its Duties, or direct a New Election.

120. If any Local Marine Board, by reason of any election not taking place, or of the simultaneous resignation or continued non-attendance of all or the greater part of the members, or from any other cause, fails to meet or to discharge its duties, the Board of Trade may, in its discretion, either take into its own hands the performance of the duties of such Local Marine Board until the next triennial appointment and election thereof, or direct that a new appointment and election of such Local Marine Board shall take place immediately.

Board of Trade, on Complaint, may alter Arrangements made by Local Marine Boards.

121. If, upon complaint made to the Board of Trade, it appears to such Board that any appointments or arrangements made by any Local Marine Board, under the powers hereby given to it, are not such as to meet the wants of the port, or are in any respect unsatisfactory or improper, the Board of Trade may annul, alter, or rectify such appointments or arrangements, in such manner as, having regard to the intentions of this Act and to the wants of the port, it deems to be expedient.

SHIPPING OFFICES.

Local Marine Boards to establish Shipping Offices.

122. In every seaport in the United Kingdom in which there is a Local Marine Board such board shall establish a shipping office or shipping offices,

and may for that purpose, subject as herein mentioned, procure the requisite premises, and appoint, and from time to time remove and re-appoint, superintendents of such offices, to be called shipping-masters, with any necessary deputies, clerks, and servants, and regulate the mode of conducting business at such offices, and shall, subject as herein mentioned, have complete control over the same; and every act done by or before any deputy duly appointed shall have the same effect as if done by or before a shipping-master. (See section 15 of 25 and 26 Vict., cap. 63, *post.*)

Board of Trade to have partial Control over Shipping Offices.

123. The sanction of the Board of Trade shall be necessary so far as regards the number of persons so appointed by any such Local Marine Board, and the amount of their salaries and wages and all other expenses; and the Board of Trade shall have the immediate control of such shipping offices, so far as regards the receipt and payment of money thereat; and all shipping-masters, deputies, clerks, and servants so appointed as aforesaid shall, before entering upon their duties, give such security (if any) for the due performance thereof as the Board of Trade requires; and if in any case the Board of Trade has reason to believe that any shipping-master, deputy, clerk, or servant appointed by any Local Marine Board does not properly discharge his duties, the Board of Trade may cause the case to be investigated, and may, if it thinks fit so to do, remove him from his office, and may provide for the proper performance of his duties until another person is properly appointed in his place.

Business of such Offices generally.

124. It shall be the general business of shipping-masters appointed as aforesaid—

To afford facilities for engaging seamen by keeping registries of their names and characters.

To superintend and facilitate their engagement and discharge in manner hereinafter mentioned.

To provide means for securing the presence on board at the proper times of men who are so engaged,

To facilitate the making of apprenticeships to the sea-service.

To perform such other duties relating to merchant seamen and merchant ships as are hereby or may hereafter, under the powers herein contained, be committed to them.

Fees to be paid upon Engagements and Discharges.

125. Such fees, not exceeding the sums specified in the table marked P. in the Schedule hereto, as are from time to time fixed by the Board of Trade, shall be payable upon all engagements and discharges effected before shipping-masters as hereinafter mentioned, and the Board of Trade shall cause scales of the fees payable for the time being to be prepared and to be conspicuously placed in the shipping offices; and all shipping-masters, their deputies, clerks, and servants, may refuse to proceed with any engagement or discharge unless the fees payable thereon are first paid.

Masters to pay Fees, and to deduct Part from Wages. Proviso as to Excess.

126. Every owner or master of a ship engaging or discharging any seaman or seamen in a shipping office or before a shipping-master shall pay to the shipping-master the whole of the fees hereby made payable in respect of such engagement or discharge, and may, for the purpose of in part reimbursing himself, deduct, in respect of each such engagement or discharge, from the wages of all persons (except apprentices) so engaged or discharged, and retain, any sums not exceeding the sums specified in that behalf in the table marked Q. in the Schedule hereto: Provided that if in any case the sums which the owner is so entitled to deduct exceed the amount of the fee payable by him, such excess shall be paid by him to the shipping-master in addition to such fee.

Penalty on Shipping-Masters taking other Remuneration.

127. Any shipping-master, deputy shipping-master, or any clerk or servant in any shipping office, who demands or receives any remuneration whatever, either directly or indirectly, for hiring or supplying any seaman for any merchant ship, excepting the lawful fees payable under this Act, shall for every such offence incur a penalty not exceeding twenty pounds, and shall also be liable to be dismissed from his office by the Board of Trade. (See section 16 of 25 and 26 Vict., cap. 63, *post.*)

Business of Shipping Offices may be transacted at Custom-House.

128. The Board of Trade may, with the consent of the Commissioners of Customs, direct that, at any place in which no separate shipping office is established, the whole or any part of the business of the shipping office shall be conducted at the custom-house, and thereupon the same shall be there conducted accordingly; and in respect of such business such custom-house shall, for all purposes, be deemed to be a shipping office, and the officer of customs there to whom such business is committed shall for all purposes be deemed to be a shipping-master within the meaning of this Act.

In London, Sailors' Homes may be Shipping Offices.

129. The Board of Trade may appoint any superintendent of or other person connected with any sailors' home in the Port of *London* to be a shipping-master, with any necessary deputies, clerks, and servants, and may appoint any office in any such home to be a shipping office; and all shipping-masters and shipping offices so appointed shall be subject to the immediate control of the Board of Trade, and not of the Local Marine Board of the port.

Dispensation with Shipping-Master's Superintendence.

130. The Board of Trade may from time to time dispense with the transaction before a shipping-master or in a shipping office of any matters required by this Act to be so transacted; and thereupon such matters shall,

if otherwise duly transacted as required by law, be as valid as if transacted before a shipping-master or in a shipping office. (See section 10 of 36 and 37 Vict., cap. 85, *post.*)

CERTIFICATES OF MASTERS AND MATES.

Examinations to be instituted for Masters and Mates.

131. Examinations shall be instituted for persons who intend to become masters or mates of foreign-going ships, or of home-trade passenger-ships, or who wish to procure certificates of competency hereinafter mentioned; and, subject as herein mentioned, the Local Marine Boards shall provide for the examinations at their respective ports, and may appoint, and from time to time remove and re-appoint, examiners to conduct the same, and may regulate the same; and any members of the Local Marine Board of the place where the examination is held may be present and assist at any such examination. (See section 17 of 25 and 26 Vict., cap. 63, *post.*)

Powers of Board of Trade over Examinations.

132. The Board of Trade may from time to time lay down rules as to the conduct of such examinations and as to the qualifications of the applicants, and such rules shall be strictly adhered to by all examiners; and no examiner shall be appointed unless he possesses a certificate of qualification, to be from time to time granted or renewed by the Board of Trade; and the sanction of the Board of Trade shall be necessary, so far as regards the number of examiners to be appointed, and the amount of their remuneration; and the Board of Trade may at any time depute any of its officers to be present and assist at any examination; and if it appears to the Board of Trade that the examinations for any two or more ports can be conducted without inconvenience by the same examiners, it may require and authorise the Local Marine Boards of such ports to act together as one board in providing for and regulating examinations and appointing and removing examiners for such ports. (See section 17 of 25 and 26 Vict., cap. 63).

Fees to be paid by Applicants for Examination.

133. All applicants for examination shall pay such fees, not exceeding the sums specified in the Table marked R. in the Schedule hereto, as the Board of Trade directs; and such fees shall be paid to such persons as the said Board appoints for that purpose.

Certificates of Competency to be granted to those who pass.

134. Subject to the proviso hereinafter contained, the Board of Trade shall deliver to every applicant who is duly reported by the local examiners to have passed the examination satisfactorily, and to have given satisfactory evidence of his sobriety, experience, ability, and general good conduct on board ship, a certificate (hereinafter called a "certificate of competency") to the effect that he is competent to act as master, or as first, second, or only mate of a foreign-going ship, or as master or mate of a home-trade

passenger-ship, as the case may be: Provided that in every case in which the Board of Trade has reason to believe such report to have been unduly made, such Board may remit the case either to the same or to any other examiners, and may require a re-examination of the applicant, or a further inquiry into his testimonials and character, before granting him a certificate.

Certificates of Service to be delivered to Persons who served as Masters or Mates before 1851, *and to certain Naval Officers; and Certificates of Service for Home-Trade Passenger-Ships to be delivered to Persons who have served as Masters or Mates in such Ships before* 1*st January* 1854.

135. Certificates of service, differing in form from certificates of competency, shall be granted as follows; (that is to say),

(1.) Every person who before the first day of *January* one thousand eight hundred and fifty-one served as master in the *British* merchant service, or who has attained or attains the rank of lieutenant, master, passed mate, or second master, or any higher rank in the service of Her Majesty or of the *East India* Company, shall be entitled to a certificate of service as master for foreign-going ships.

(2.) Every person who before the first day of *January* one thousand eight hundred and fifty-one served as mate in the *British* merchant service shall be entitled to a certificate of service as mate for foreign-going ships.

(3.) Every person who before the first day of *January* one thousand eight hundred and fifty-four has served as master of a home-trade passenger-ship shall be entitled to a certificate of service as master for home-trade passenger-ships.

(4.) Every person who before the first day of *January* one thousand eight hundred and fifty-four has served as mate of a home-trade passenger-ship shall be entitled to a certificate of service as mate for home-trade passenger-ships:—

And each of such certificates of service shall contain particulars of the name, place, and time of birth, and of the length and nature of the previous service of the person to whom the same is delivered; and the Board of Trade shall deliver such certificates of service to the various persons so respectively entitled thereto, upon their proving themselves to have attained such rank or to have served as aforesaid, and upon their giving a full and satisfactory account of the particulars aforesaid.

No Foreign-going Ship or Home-Trade Passenger-Ship to proceed to Sea without Certificates of the Master and Mates.

136. No foreign-going ship or home-trade passenger-ship shall go to sea from any port in the United Kingdom unless the master thereof, and in the case of a foreign-going ship the first and second mates or only mate (as the case may be), and in the case of a home-trade passenger-ship the first or only mate (as the case may be), have obtained and possess valid certificates either of competency or service appropriate to their several stations in such ship, or of a higher grade; and no such ship, if of one hundred tons burden or upwards, shall go to sea as aforesaid, unless at least one

officer besides the master has obtained and possesses a valid certificate appropriate to the grade of only mate therein or to a higher grade; and every person who, having been engaged to serve as master or as first or second or only mate of any foreign going ship, or as master or first or only mate of a home-trade passenger-ship, goes to sea as aforesaid as such master or mate without being at the time entitled to and possessed of such a certificate as hereinbefore required, or who employs any person as master, or first, second, or only mate of any foreign-going ship, or as master or first or only mate of a home-trade passenger-ship, without ascertaining that he is at the time entitled to and possessed of such certificate, shall for each such offence incur a penalty not exceeding fifty pounds.

Certificates for Foreign-going Ships available for Home-Trade Passenger-Ships.

137. Every certificate of competency for a foreign-going ship shall be deemed to be of a higher grade than the corresponding certificate for a home-trade passenger-ship, and shall entitle the lawful holder thereof to go to sea in the corresponding grade in such last-mentioned ship; but no certificate for a home-trade passenger-ship shall entitle the holder to go to sea as master or mate of a foreign-going ship.

The Registrar to record Grants, Cancellations, &c., of Certificates. Duplicates and Entries to be Evidence.

138. All certificates, whether of competency or service, shall be made in duplicate, and one part shall be delivered to the person entitled to the certificate, and the other shall be kept and recorded by the Registrar-General of Seamen, or by such other person as the Board of Trade appoints for that purpose; and the Board of Trade shall give to such registrar or such other person immediate notice of all orders made by it for cancelling, suspending, altering, or otherwise affecting any certificate in pursuance of the powers herein contained; and the registrar or such other person as aforesaid shall thereupon make a corresponding entry in the record of certificates; and a copy purporting to be certified by such registrar or his assistant, or by such person as aforesaid, of any certificate, shall be *primâ facie* evidence of such certificate, and a copy purporting to be so certified as aforesaid of any entry made as aforesaid in respect of any certificate shall be *primâ facie* evidence of the truth of the matters stated in such entry.

In Case of Loss, a Copy to be granted.

139. Whenever any master or mate proves to the satisfaction of the Board of Trade that he has, without fault on his part, lost or been deprived of any certificate already granted to him, the Board of Trade shall, upon payment of such fee (if any) as it directs, cause a copy of the certificate to which by the record so kept as aforesaid he appears to be entitled, to be made out and certified as aforesaid, and to be delivered to him; and any copy which purports to be so made and certified as aforesaid shall have all the effect of the original.

Penalties for False Representations; for Forging or Altering, or Fraudulently using or Lending any Certificate.

140. Every person who makes, or procures to be made, or assists in making, any false representation for the purpose of obtaining for himself or for any other person a certificate either of competency or service, or who forges, assists in forging, or procures to be forged, or fraudulently alters, assists in fraudulently altering, or procures to be fraudulently altered, any such certificate or any official copy of any such certificate, or who fraudulently makes use of any such certificate or any copy of any such certificate which is forged, altered, cancelled, suspended, or to which he is not justly entitled, or who fraudulently lends his certificate to or allows the same to be used by any other person, shall for each offence be deemed guilty of a misdemeanour. (As to examinations and certificates of engineers, see 25 and 26 Vict., cap. 63, secs. 5 to 10, *post.*)

APPRENTICESHIPS TO SEA-SERVICE.

Shipping-Masters to assist in binding Apprentices, and may receive Fees.

141. All shipping-masters appointed under this Act shall, if applied to for the purpose, give to any board of guardians, overseers, or other persons desirous of apprenticing boys to the sea-service, and to masters and owners of ships requiring apprentices, such assistance as is in their power for facilitating the making of such apprenticeships, and may receive from persons availing themselves of such assistance such fees as may be determined in that behalf by the Board of Trade, with the concurrence, so far as relates to pauper apprentices in *England*, of the Poor Law Board in *England*; and so far as relates to pauper apprentices in *Ireland*, of the Poor Law Commissioners in *Ireland*.

Indentures of Boys bound Apprentices to Sea-Service by Guardians or Overseers to be witnessed by Two Justices.

142. In the case of every boy bound apprentice to the sea-service by any guardians or overseers of the poor, or other persons having the authority of guardians of the poor, the indentures shall be executed by the boy and the person to whom he is bound in the presence of, and shall be attested by, two justices of the peace, who shall ascertain that the boy has consented to be bound, and has attained the age of twelve years, and is of sufficient health and strength, and that the master to whom the boy is to be bound is a proper person for the purpose.

Indentures of Apprenticeship to be exempt from Stamp Duty, and to be Recorded.

143. All indentures of apprenticeship to the sea-service shall be exempt from stamp duty, and all such indentures shall be in duplicate; and every person to whom any boy whatever is bound as an apprentice to the sea-service in the United Kingdom shall, within seven days after the execution of the indentures, take or transmit the same to the Registrar-General of Seamen or to some shipping-master; and the said registrar

or shipping-master shall retain and record one copy, and shall endorse on the other that the same has been recorded, and shall re-deliver the same to the master of the apprentice; and whenever any such indenture is assigned or cancelled, and whenever any such apprentice dies or deserts, the master of the apprentice shall, within seven days after such assignment, cancellation, death, or desertion, if the same happens within the United Kingdom, or, if the same happens elsewhere, so soon afterwards as circumstances permit, notify the same either to the said Registrar of Seamen, or to some shipping-master, to be recorded; and every person who fails to comply with the provisions of this section shall incur a penalty not exceeding ten pounds.

Rules to govern Apprenticeship of Paupers in Great Britain and Ireland respectively.

144. Subject to the provisions hereinbefore contained, all apprenticeships to the sea-service made by any guardians or overseers of the poor, or persons having the authority of guardians of the poor, shall, if made in *Great Britain*, be made in the same manner and be subject to the same laws and regulations as other apprenticeships made by the same persons, and if made in *Ireland*, shall be subject to the following rules; (that is to say),

(1.) In every union the guardians of the poor, or other persons duly appointed to carry into execution the acts for the relief of the destitute poor, and having the authority of guardians of the poor, may put out and bind as an apprentice to the sea-service any boy who, or whose parent or parents, is or are receiving relief in such union, and who has attained the age of twelve years, and is of sufficient health and strength, and who consents to be so bound.

(2.) If the cost of relieving any such boy is chargeable to an electoral division of a union, then (except in cases in which paid officers act in place of guardians) he shall not be bound as aforesaid unless the consent in writing of the guardians of such electoral division, or of a majority of the guardians (if more than one), be first obtained, such consent to be, when possible, endorsed upon the indentures.

(3.) The expense incurred in the binding and outfit of any such apprentice shall be charged to the union or electoral division (as the case may be) to which the boy or his parent or parents is or are chargeable at the time of his being apprenticed.

(4.) All indentures made in any union may be sued upon by the guardians of the union, or persons having the authority of guardians therein for the time being, by their name of office, and actions brought by them upon such indentures shall not abate by reason of death or change in the persons holding the office; but no such action shall be commenced without the consent of the *Irish* Poor Law Commissioners.

(5.) The amount of the costs incurred in any such action, and not recovered from the defendant therein, may be charged upon the union or electoral division (as the case may be) to which the boy or his parent or parents was or were chargeable at the time of his being apprenticed.

Apprentices and their Indentures to be brought before Shipping-Master before each Voyage in a Foreign-going Ship.

145. The master of every foreign-going ship shall, before carrying any apprentice to sea from any place in the United Kingdom, cause such apprentice to appear before the shipping-master before whom the crew is engaged, and shall produce to him the indenture by which such apprentice is bound, and the assignment or assignments thereof (if any); and the name of such apprentice, with the date of the indenture and of the assignment or assignments thereof (if any), and the name of the port or ports at which the same has been registered, shall be entered on the agreement; and for any default in obeying the provisions of this section the master shall for each offence incur a penalty not exceeding five pounds.

ENGAGEMENT OF SEAMEN.

Board of Trade may license Persons to procure Seamen.

146. The Board of Trade may grant to such persons as it thinks fit licences to engage or supply seamen or apprentices for merchant ships in the United Kingdom, to continue for such periods, to be upon such terms, and to be revocable upon such conditions, as such Board thinks proper.

Penalties.

147. The following offences shall be punishable as hereinafter mentioned; (that is to say),

For supplying Seamen without Licence.

(1.) If any person not licensed as aforesaid, other than the owner, master, or mate of a ship, or some person who is *bonâ fide* the servant and in the constant employ of the owner, or a shipping-master duly appointed as aforesaid, engages or supplies any seaman or apprentice to be entered on board any ship in the United Kingdom, he shall for each seaman or apprentice so engaged or supplied incur a penalty not exceeding twenty pounds.

For employing unlicenced Persons.

(2.) If any person employs any unlicensed person, other than persons so excepted as aforesaid, for the purpose of engaging or supplying any seaman or apprentice to be entered on board any ship in the United Kingdom, he shall for each seaman or apprentice so engaged or supplied incur a penalty not exceeding twenty pounds, and if licensed, shall in addition forfeit his licence.

For receiving Seamen illegally supplied.

(3.) If any person knowingly receives or accepts to be entered on board any ship any seaman or apprentice who has been engaged or sup-

plied contrary to the provisions of this Act, he shall, for every seaman or apprentice so engaged or supplied incur a penalty not exceeding twenty pounds.

Penalty for receiving Remuneration from Seamen for Shipping them.

148. If any person demands or receives, either directly or indirectly, from any seaman or apprentice, or from any person seeking employment as a seaman or apprentice, or from any person on his behalf, any remuneration whatever, other than the fees hereby authorised, for providing him with employment, he shall for every such offence incur a penalty not exceeding five pounds.

Agreements to be made with Seamen containing certain Particulars.

149. The master of every ship, except ships of less than eighty tons registered tonnage, exclusively employed in trading between different ports on the coasts of the United Kingdom, shall enter into an agreement with every seaman whom he carries to sea from any port in the United Kingdom as one of his crew in the manner hereinafter mentioned; and every such agreement shall be in a form sanctioned by the Board of Trade, and shall be dated at the time of the first signature thereof, and shall be signed by the master before any seaman signs the same, and shall contain the following particulars as terms thereof; (that is to say),

(1.) The nature, and, as far as practicable, the duration of the intended voyage or engagement.
(2.) The number and description of the crew, specifying how many are engaged as sailors.
(3.) The time at which each seaman is to be on board or to begin work.
(4.) The capacity in which each seaman is to serve.
(5.) The amount of wages which each seaman is to receive.
(6.) A scale of the provisions which are to be furnished to each seaman.
(7.) Any regulations as to conduct on board, and as to fines, short allowance of provisions, or other lawful punishments for misconduct, which have been sanctioned by the Board of Trade as regulations proper to be adopted, and which the parties agree to adopt.

Proviso as to Forms for Colonial Ships.

And every such agreement shall be so framed as to admit of stipulations, to be adopted at the will of the master and seamen in each case, as to advance and allotment of wages, and may contain any other stipulations which are not contrary to law: Provided that if the master of any ship belonging to any *British* possession has an agreement with his crew made in due form according to the law of the possession to which such ship belongs, or in which her crew were engaged, and engages single seamen in the United Kingdom, such seamen may sign the agreement so made, and it shall not be necessary for them to sign an agreement in the form sanctioned by the Board of Trade. (See also section 7 and 8 of 36 and 37 Vict., cap. 85, *post.*)

For Foreign-going Ships, such Agreements, when made in the United Kingdom, except in Special Cases, to be made before and attested by a Shipping-Master.

150. In the case of all foreign-going ships, in whatever part of Her Majesty's dominions the same are registered, the following rules shall be observed with respect to agreements; (that is to say),

(1.) Every agreement made in the United Kingdom (except in such cases of agreements with substitutes as are hereinafter specially provided for) shall be signed by each seaman in the presence of a shipping-master.

(2.) Such shipping-master shall cause the agreement to be read over and explained to each seaman, or otherwise ascertain that each seaman understands the same before he signs it, and shall attest each signature.

To be in Duplicate.

(3.) When the crew is first engaged, the agreement shall be signed in duplicate, and one part shall be retained by the shipping-master, and the other part shall contain a special place or form for the descriptions and signatures of substitutes or persons engaged subsequently to the first departure of the ship, and shall be delivered to the master.

Provision for Substitutes.

(4.) In the case of substitutes engaged in the place of seamen who have duly signed the agreement, and whose services are lost within twenty-four hours of the ship's putting to sea by death, desertion, or other unforeseen cause, the engagement shall, when practicable, be made before some shipping-master duly appointed in the manner hereinbefore specified; and whenever such last-mentioned engagement cannot be so made, the master shall, before the ship puts to sea, if practicable, and if not, as soon afterwards as possible, cause the agreement to be read over and explained to the seamen; and the seamen shall thereupon sign the same in the presence of a witness, who shall attest their signatures.

Foreign-going Ships making Short Voyages may have Running Agreements.

151. In the case of foreign-going ships making voyages averaging less than six months in duration, running agreements with the crew may be made to extend over two or more voyages, so that no such agreement shall extend beyond the next following thirteenth day of *June* or thirty-first day of *December*, or the first arrival of the ship at her port of destination in the United Kingdom after such date, or the discharge of cargo consequent upon such arrival; and every person entering into such agreement, whether engaged upon the first commencement thereof or otherwise, shall enter into and sign the same in the manner hereby required for other foreign-going ships; and every person engaged thereunder, if discharged in the United Kingdom, shall be discharged in the manner hereby required for the discharge of seamen belonging to other foreign-going ships.

Engagement and Discharge of Seamen in the meantime.

152. The master of every foreign-going ship for which such a running agreement as aforesaid is made shall, upon every return to any port in the United Kingdom before the final termination of the agreement, discharge or engage before the shipping-master at such port any seaman whom he is required by law so to discharge or engage, and shall upon every such return endorse on the agreement a statement (as the case may be) either that no such discharges or engagements have been made or are intended to be made before the ship again leaves port, or that all such discharges or engagements have been duly made as hereinbefore required, and shall deliver the agreement so endorsed to the shipping-master; and any master who wilfully makes a false statement in such endorsement shall incur a penalty not exceeding twenty pounds; and the shipping-master shall also sign an endorsement on the agreement to the effect that the provisions of this Act relating to such agreement have been complied with, and shall re-deliver the agreement so endorsed to the master.

Duplicates of Running Agreements, how to be dealt with.

153. In cases in which such running agreements are made, the duplicate agreement retained by the shipping-master upon the first engagement of the crew shall either be transmitted to the Registrar-General of Seamen immediately, or be kept by the shipping-master until the expiration of the agreement, as the Board of Trade directs.

Fees to be paid on such Running Agreements.

154. For the purpose of determining the fees to be paid upon the engagement and discharge of seamen belonging to foreign-going ships which have running agreements as aforesaid, the crew shall be considered to be engaged when the agreement is first signed, and to be discharged when the agreement finally terminates, and all intermediate engagements and discharges shall be considered to be engagements and discharges of single seamen.

In Home-Trade Ships, Agreement to be entered into before a Shipping-Master or other Witness.

155. In the case of home-trade ships, crews or single seamen may, if the master thinks fit, be engaged before a shipping-master in the manner hereinbefore directed with respect to foreign-going ships; and in every case in which the engagement is not so made, the master shall, before the ship puts to sea, if practicable, and if not, as soon afterwards as possible, cause the agreement to be read over and explained to each seaman, and the seaman shall thereupon sign the same in the presence of a witness, who shall attest his signature.

Special Agreements for Home-Trade Ships belonging to same Owners.

156. In cases where several home-trade ships belong to the same owner, the agreement with the seamen may, notwithstanding anything herein contained, be made by the owner instead of by the master, and the seamen may be engaged to serve in any two or more of such ships, provided that

the names of the ships and the nature of the service are specified in the agreement; but with the foregoing exception all provisions herein contained which relate to ordinary agreements for home-trade ships shall be applicable to agreements made in pursuance of this section.

Penalty for Shipping Seamen without Agreement duly executed.

157. If in any case a master carries any seaman to sea without entering into an agreement with him in the form and manner and at the place and time hereby in such case required, the master in the case of a foreign-going ship, and the master or owner in the case of a home-trade ship, shall for each such offence incur a penalty not exceeding five pounds.

Changes in Crew to be Reported.

158. The master of every foreign-going ship of which the crew has been engaged before a shipping-master shall, before finally leaving the United Kingdom, sign and send to the nearest shipping-master a full and accurate statement, in a form sanctioned by the Board of Trade, of every change which takes place in his crew before finally leaving the United Kingdom, and in default shall for each offence incur a penalty not exceeding five pounds; and such statement shall be admissible in evidence, subject to all just exceptions.

Seamen engaged in the Colonies to be Shipped before some Shipping-Master or Officer of Customs.

159. Every master of a ship who, if such ship is registered in the United Kingdom, engages any seaman in any *British* possession, or if such ship belongs to any *British* possession, engages any seaman in any *British* possession other than that to which the ship belongs, shall, if there is at the place where such seaman is engaged any official shipping-master or other officer duly appointed for the purpose of shipping seamen, engage such seaman before such shipping-master, and if there is no such shipping master or officer, then before some officer of customs; and the same rules, qualifications, and penalties as are hereinbefore specified with respect to the engagement of seamen before shipping-masters in the United Kingdom shall apply to such engagements in a *British* possession; and upon every such engagement such shipping-master or officer as aforesaid shall endorse upon the agreement an attestation to the effect that the same has been signed in his presence, and otherwise made as hereby required; and if in any case such attestation is not made, the burden of proving that the seaman was duly engaged as hereby required shall lie upon the master.

Seamen engaged in Foreign Ports to be Shipped with the Sanction and in the Presence of the Consul.

160. Every master of a *British* ship who engages any seaman at any place out of Her Majesty's dominions in which there is a *British* consular officer shall, before carrying such seaman to sea, procure the sanction of such officer, and shall engage such seaman before such officer; and the same rules as are hereinbefore contained with respect to the engagement of seamen before shipping-masters in the United Kingdom shall apply to

such engagements made before consular officers; and upon every such engagement the consular officer shall endorse upon the agreement his sanction thereof, and an attestation to the effect that the same has been signed in his presence, and otherwise made as hereby required; and every master who engages any seaman in any place in which there is a consular officer, otherwise than as hereinbefore required, shall incur a penalty not exceeding twenty pounds; and if in any case the endorsement and attestation hereby required is not made upon the agreement, the burden of proving the engagement to have been made as hereinbefore required shall lie upon the master.

Rules as to Production of Agreements and Certificates of Masters and Mates of Foreign-going Ships.

161. The following rules shall be observed with respect to the production of agreements and certificates of competency or service for foreign-going ships; (that is to say),

(1.) The master of every foreign-going ship shall, on signing the agreement with his crew, produce to the shipping-master before whom the same is signed the certificates of competency or service which the said master and his first and second mate or only mate, as the case may be, are hereby required to possess; and upon such production being duly made, and the agreement being duly executed as hereby required, the shipping-master shall sign and give to the master a certificate to that effect.

(2.) In the case of running agreements for foreign-going ships the shipping-master shall, before the second and every subsequent voyage made after the first commencement of the agreement, sign and give to the master, on his complying with the provisions herein contained with respect to such agreements, and producing to the shipping-master the certificate of competency or service of any first, second, or only mate then first engaged by him, a certificate to that effect.

(3.) The master of every foreign-going ship shall, before proceeding to sea, produce the certificate so to be given to him by the shipping-master as aforesaid to the collector or comptroller of customs, and no officer of customs shall clear any such ship outwards without such production; and if any such ship attempts to go to sea without a clearance, any such officer may detain her until such certificate as aforesaid is produced.

(4.) The master of every foreign-going ship shall, within forty-eight hours after the ship's arrival at her final port of destination in the United Kingdom, or upon the discharge of the crew, whichever first happens, deliver such agreement to a shipping-master at the place; and such shipping-master shall thereupon give to the master a certificate of such delivery; and no officer of customs shall clear any foreign-going ship inwards without the production of such certificate.

And if the master of any foreign-going ship fails to deliver the agreement to a shipping-master at the time and in the manner hereby directed, he shall for every default incur a penalty not exceeding five pounds.

Rules as to Production of Agreements and Certificates for Home-Trade Ships.

162. The following rules shall be observed with respect to the production of agreements and certificates of competency or service for home-trade ships; (that is to say),

(1.) In the case of home-trade ships of more than eighty tons burden, no agreement shall extend beyond the next following thirtieth day of *June* or thirty-first day of *December*, or the first arrival of the ship at her final port of destination in the United Kingdom after such date, or the discharge of cargo consequent upon such arrival.

(2.) The master or owner of every such ship shall, within twenty-one days after the thirtieth day of *June* and the thirty-first day of *December* in every year, transmit or deliver to some shipping-master in the United Kingdom every agreement made within the six calendar months next preceding such days respectively, and shall also in the case of home-trade passenger-ships produce to the shipping-master the certificates of competency or service which the said master and his first or only mate, as the case may be, are hereby required to possess.

(3.) The shipping-master shall thereupon give to the master or owner a certificate of such delivery and production; and no officer of customs shall grant a clearance or transire for any such ship as last aforesaid without the production of such certificate: and if any such ship attempts to ply or go to sea without such clearance or transire, any such officer may detain her until the said certificate is produced.

And if the agreement for any home-trade ship is not delivered or transmitted by the master or owner to a shipping-master at the time and in the manner hereby directed, such master or owner shall for every default incur a penalty not exceeding five pounds. (See also section 16 of 35 and 36 Vict., cap. 73, *post.*)

Alterations to be Void unless Attested to have been made with the Consent of all Parties.

163. Every erasure, interlineation, or alteration in any such agreement with seamen as is required by the third part of this Act (except additions so made as hereinbefore directed for shipping substitutes or persons engaged subsequently to the first departure of the ship) shall be wholly inoperative, unless proved to have been made with the consent of all the persons interested in such erasure, interlineation, or alteration, by the written attestation (if made in Her Majesty's dominions) of some shipping-master, justice, officer of customs, or other public functionary, or (if made out of Her Majesty's dominions) of a *British* consular officer, or, where there is no such officer, of two respectable *British* merchants.

Penalty for Falsifying Agreement.

164. Every person who fraudulently alters, assists in fraudulently altering, or procures to be fraudulently altered, or makes, or assists in making,

or procures to be made, any false entry in, or delivers, assists in delivering, or procures to be delivered, a false copy of any agreement, shall for each such offence be deemed guilty of a misdemeanour.

Seamen not to be Bound to Produce Agreement.

165. Any seaman may bring forth evidence to prove the contents of any agreement or otherwise to support his case, without producing or giving notice to produce the agreement or any copy thereof.

Copy of Agreement to be made Accessible to Crew.

166. The master shall at the commencement of every voyage or engagement cause a legible copy of the agreement (omitting the signatures) to be placed or posted up in such part of the ship as to be accessible to the crew, and in default shall for each offence incur a penalty not exceeding five pounds.

Seamen Discharged before Voyage to have Compensation.

167. Any seaman who has signed an agreement, and is afterwards discharged before the commencement of the voyage, or before one month's wages are earned, without fault on his part justifying such discharge, and without his consent, shall be entitled to receive from the master or owner, in addition to any wages he may have earned, due compensation for the damage thereby caused to him, not exceeding one month's wages, and may, on adducing such evidence as the court hearing the case deems satisfactory of his having been so improperly discharged as aforesaid, recover such compensation as if it were wages duly earned.

ALLOTMENT OF WAGES.

Regulations as to Allotment Notes.

168. All stipulations for the allotment of any part of the wages of a seaman during his absence which are made at the commencement of the voyage shall be inserted in the agreement, and shall state the amounts and times of the payments to be made; and all allotment notes shall be in forms sanctioned by the Board of Trade.

Allotment Notes may be Sued on summarily by certain Persons and under certain Conditions.

169. The wife, or the father or mother, or the grandfather or grandmother, or any child or grandchild, or any brother or sister of any seaman in whose favour an allotment note of part of the wages of such seaman is made, may, unless the seaman is shown in manner hereinafter mentioned to have forfeited or ceased to be entitled to the wages out of which the allotment is to be paid, and subject, as to the wife, to the provision hereinafter contained, sue for and recover the sums allotted by the note when and as the same are made payable, with costs, from the owner or any agent who has authorised the drawing of the note, either in the County

Court or in the summary manner in which seamen are by this Act enabled to sue for and recover wages not exceeding fifty pounds; and in any such proceeding it shall be sufficient for the claimant to prove that he or she is the person mentioned in the note, and that the note was given by the owner or by the master or some other authorised agent; and the seaman shall be presumed to be duly earning his wages, unless the contrary is shown to the satisfaction of the court, either by the official statement of the change in the crew caused by his absence, made and signed by the master, as by this Act is required, or by a duly certified copy of some entry in the official log-book to the effect that he has left the ship, or by a credible letter from the master of the ship to the same effect, or by such other evidence, of whatever description, as the court in its absolute discretion considers sufficient to show satisfactorily that the seaman has ceased to be entitled to the wages out of which the allotment is to be paid: Provided that the wife of any seaman who deserts her children, or so misconducts herself as to be undeserving of support from her husband, shall thereupon forfeit all right to further payments of any allotment of his wages which has been made in her favour.

DISCHARGE AND PAYMENT OF WAGES.

Discharge from Foreign-going Ships to be made before Shipping-Master.

170. In the case of all *British* foreign-going ships, in whatever part of Her Majesty's dominions the same are registered, all seamen discharged in the United Kingdom shall be discharged and receive their wages in the presence of a shipping-master duly appointed under this Act, except in cases where some competent court otherwise directs; and any master or owner of any such ship who discharges any seaman belonging thereto, or, except as aforesaid, pays his wages within the United Kingdom in any other manner, shall incur a penalty not exceeding ten pounds; and in the case of home-trade ships seamen may, if the owner or master so desires, be discharged and receive their wages in like manner.

Master to deliver Account of Wages.

171. Every master shall, not less than twenty-four hours before paying off or discharging any seaman, deliver to him, or, if he is to be discharged before a shipping-master, to such shipping-master, a full and true account, in a form sanctioned by the Board of Trade, of his wages and of all deductions to be made therefrom on any account whatever, and in default shall for each offence incur a penalty not exceeding five pounds; and no deduction from the wages of any seaman (except in respect of any matter happening after such delivery) shall be allowed unless it is included in the account so delivered; and the master shall during the voyage enter the various matters in respect of which such deductions are made, with the amounts of the respective deductions, as they occur, in a book to be kept for that purpose, and shall, if required, produce such book at the time of the payment of wages, and also upon the hearing before any competent authority of any complaint or question relating to such payments.

On Discharge, Masters to give Seamen Certificates of Discharge, and Return Certificates of Competency or Service to Mates.

172. Upon the discharge of any seaman, or upon payment of his wages, the master shall sign and give him a certificate of his discharge, in a form sanctioned by the Board of Trade, specifying the period of his service and the time and place of his discharge; and if any master fails to sign and give to any such seaman such certificate of discharge, he shall for each such offence incur a penalty not exceeding ten pounds; and the master shall also, upon the discharge of every certificated mate whose certificate of competency or service has been delivered to and retained by him, return such certificate, and shall in default incur a penalty not exceeding twenty-pounds.

Shipping-Master may Decide Questions which Parties refer to him.

173. Every shipping-master shall hear and decide any question whatever between a master or owner and any of his crew which both parties agree in writing to submit to him; and every award so made by him shall be binding on both parties, and shall in any legal proceeding which may be taken in the matter before any court of justice be deemed to be conclusive as to the rights of the parties; and no such submission or award shall require a stamp; and any document purporting to be such submission or award shall be *primâ facie* evidence thereof.

Masters and others to Produce Ship's Papers to Shipping-Masters, and give Evidence.

174. In any proceeding relating to the wages, claims, or discharge of any seaman carried on before any shipping-master under the provisions of this Act, such shipping-master may call upon the owner or his agent, or upon the master or any mate or other member of the crew, to produce any log-books, papers, or other documents in their respective possession or power relating to any matter in question in such proceeding, and may call before him and examine any such persons, being then at or near the place, on any such matter; and every owner, agent, master, mate, or other member of the crew who, when called upon by the shipping-master, does not produce any such paper or document as aforesaid, if in his possession or power, or does not appear and give evidence, shall, unless he shows some reasonable excuse for such default, for each such offence incur a penalty not exceeding five pounds.

Settlement of Wages.

175. The following rules shall be observed with respect to the settlement of wages; (that is to say),

Release to be Signed before and Attested by the Shipping-Master.

(1.) Upon the completion before a shipping-master of any discharge and settlement, the master or owner and each seaman shall respectively in the presence of the shipping-master sign, in a form sanctioned by the Board of Trade, a mutual release of all claims in respect of the

past voyage or engagement, and the shipping-master shall also sign and attest it, and shall retain and transmit it as herein directed.

To be Discharge.

(2.) Such release so signed and attested shall operate as a mutual discharge and settlement of all demands between the parties thereto in respect of the past voyage or engagement.

And to be Evidence.

(3.) A copy of such release, certified under the hand of such shipping-master to be a true copy, shall be given by him to any party thereto requiring the same; and such copy shall be receivable in evidence upon any future question touching such claims as aforesaid, and shall have all the effect of the original of which it purports to be a copy.

No other Receipt to be a Discharge.

(4.) In cases in which discharge and settlement before a shipping-master are hereby required, no payment, receipt, settlement, or discharge otherwise made shall operate or be admitted as evidence of the release or satisfaction of any claim.

Voucher to be given to Master and to be Evidence.

(5.) Upon any payment being made by a master before a shipping-master, the shipping-master shall, if required, sign and give to such master a statement of the whole amount so paid; and such statement shall, as between the master and his employer, be received as evidence that he has made the payments therein mentioned.

Master to make Reports of Character.

176. Upon every discharge effected before a shipping-master the master shall make and sign, in a form sanctioned by the Board of Trade, a report of the conduct, character, and qualifications of the persons discharged, or may state in a column to be left for that purpose in the said form that he declines to give any opinion upon such particulars or upon any of them; and the shipping-master shall transmit the same to the Registrar-General of Seamen, or to such other person as the Board of Trade directs, to be recorded, and shall, if desired so to do by any seaman, give to him or endorse on his certificate of discharge a copy of so much of such report as concerns him; and every person who makes, assists in making, or procures to be made, any false certificate or report of the service, qualifications, conduct, or character of any seaman, knowing the same to be false, or who forges, assists in forging, or procures to be forged, or fraudulently alters, assists in fraudulently altering, or procures to be fraudulently altered, any such certificate or report, or who fraudulently makes use of any certificate or report, or of any copy of any certificate or report, which is forged or altered or does not belong to him, shall for each such offence be deemed guilty of a misdemeanour. (See also section 11 of 36 and 37 Vict., cap. 85, *post.*)

REMITTANCE OF WAGES, AND SAVINGS BANKS FOR SEAMEN.

Facilities may be given for Remitting Seamen's Wages.

177. Facilities shall, if the Board of Trade so directs, be given for remitting the wages and other moneys of seamen and apprentices to their relatives or other persons by means of money-orders issued by shipping-masters; and the Board of Trade may make regulations concerning such orders, and the persons by or to whom, and the mode and time in and at which, the same are to be paid, and may from time to time repeal or alter any such regulations; and all such regulations, so long as they are in force, shall be binding upon all persons interested or claiming to be interested in such orders, as well as upon the officers employed in issuing or paying the same; and no legal proceeding shall be instituted against the Board of Trade, or against any shipping-master or other public officer employed about such orders, on account of any such regulations, or on account of any act done or left undone in pursuance thereof, or on account of any refusal, neglect, or omission to pay any such money-order, unless such refusal, neglect, or omission arise from fraud or wilful misbehaviour on the part of the person against whom proceedings are instituted.

Power to Pay when Order is Lost.

178. The Board of Trade may, in any case in which it thinks fit so to do, cause the amount of any such money-order as aforesaid to be paid to the person to whom or in whose favour the same may have been granted, or to his personal representatives, legatees, or next of kin, notwithstanding that such order may not be in his or their possession; and in all such cases, from and after such payment the Board of Trade, and every shipping-master or other officer of the Board of Trade, shall be freed from all liability in respect of such order.

Penalty for issuing Money-Orders with fraudulent intent.

179. Every shipping-master or other public officer who grants or issues any money-order with a fraudulent intent, shall in *England* or *Ireland* be deemed guilty of felony, and in *Scotland* of a high crime and offence, and shall be liable to be kept in penal servitude for a term not exceeding four years.

Savings Banks for Seamen may be Established.

180. The Commissioners for the reduction of the national debt, or the Comptroller-General acting under them, may, on the application and recommendation of the Board of Trade, establish savings banks at such ports and places within the United Kingdom, either in the shipping offices established in such ports or elsewhere, as may appear to be expedient, and may appoint treasurers to receive from or on account of seamen, or the wives and families of seamen, desirous to become depositors in such savings banks, deposits to an amount not exceeding one hundred and fifty pounds in the whole in respect of any one account, under such regulations as may

be prescribed by the said Commissioners or Comptroller-General; and such regulations shall be binding on all such treasurers and depositors; and the said Commissioners may remove such treasurers, and appoint others in their place; and all the provisions of the Acts now in force relating to savings banks, except so far as relates to the annual amount of deposit, shall apply to all savings banks which may be established under the authority of this Act, and to such treasurers and depositors as aforesaid. (See section 17 of 18 and 19 Vict., cap. 91, *post.*)

LEGAL RIGHTS TO WAGES.

Right to Wages and Provisions, when to begin.

181. A seaman's right to wages and provisions shall be taken to commence either at the time at which he commences work or at the time specified in the agreement for his commencement of work or presence on board, whichever first happens.

Seamen not to give up certain Rights.

182. No seaman shall by any agreement forfeit his lien upon the ship, or be deprived of any remedy for the recovery of his wages to which he would otherwise have been entitled; and every stipulation in any agreement inconsistent with any provision of this Act, and every stipulation by which any seaman consents to abandon his right to wages in the case of the loss of the ship, or to abandon any right which he may have or obtain in the nature of salvage, shall be wholly inoperative. (See section 18 of 25 and 26 Vict., cap. 63, *post.*)

Wages not to be Dependent on the Earning of Freight.

183. No right to wages shall be dependent on the earning of freight; and every seaman and apprentice who would be entitled to demand and recover any wages if the ship in which he has served had earned freight, shall, subject to all other rules of law and conditions applicable to the case, be entitled to claim and recover the same, notwithstanding that freight has not been earned; but in all cases of wreck or loss of the ship, proof that he has not exerted himself to the utmost to save the ship, cargo, and stores shall bar his claim.

In Case of Death, such Wages to be paid as after mentioned.

184. If any seaman or apprentice to whom wages are due under the last preceding enactment dies before the same are paid, they shall be paid and applied in the manner hereinafter specified with regard to the wages of seamen who die during a voyage.

Rights to Wages in case of Termination of Service by Wreck or Illness.

185. In cases where the service of any seaman terminates before the period contemplated in the agreement by reason of the wreck or loss of the ship, and also in cases where such service terminates before such period as aforesaid by reason of his being left on shore at any place abroad under a

certificate of his unfitness or inability to proceed on the voyage granted as hereinafter mentioned, such seaman shall be entitled to wages for the time of service prior to such termination as aforesaid, but not for any further period.

Wages not to Accrue during Refusal to Work or Imprisonment.

186. No seaman or apprentice shall be entitled to wages for any period during which he unlawfully refuses or neglects to work when required, whether before or after the time fixed by the agreement for his beginning work, nor, unless the court hearing the case otherwise directs, for any period during which he is lawfully imprisoned for any offence committed by him.

Period within which Wages are to be Paid.

187. The master or owner of every ship shall pay to every seaman his wages within the respective periods following; (that is to say), in the case of a home-trade ship within two days after the termination of the agreement or at the time when such seaman is discharged, whichever first happens; and in the case of all other ships (except ships employed in the southern whale-fishery or on other voyages for which seamen by the terms of their agreement are wholly compensated by shares in the profits of the adventure), within three days after the cargo has been delivered, or within five days after the seaman's discharge, whichever first happens; and in all cases the seaman shall, at the time of his discharge, be entitled to be paid on account a sum equal to one-fourth part of the balance due to him; and every master or owner who neglects or refuses to make payment in manner aforesaid, without sufficient cause, shall pay to the seaman a sum not exceeding the amount of two days' pay for each of the days, not exceeding ten days, during which payment is delayed beyond the respective periods aforesaid, and such sum shall be recoverable as wages.

MODE OF RECOVERING WAGES.

Seamen may Sue for Wages in a Summary Manner.

188. Any seaman or apprentice, or any person duly authorised on his behalf, may sue in a summary manner before any two justices of the peace, acting in or near to the place at which the service has terminated, or at which the seaman or apprentice has been discharged, or at which any person upon whom the claim is made is or resides, or in *Scotland* either before any such justices or before the sheriff of the county within which any such place is situated, for any amount of wages due to such seaman or apprentice not exceeding fifty pounds over and above the costs of any proceeding for the recovery thereof, so soon as the same becomes payable; and every order made by such justices or sheriff in the matter shall be final.[1]

Restrictions on Suits for Wages in Superior Courts.

189. No suit or proceeding for the recovery of wages under the sum of fifty pounds shall be instituted by or on behalf of any seaman or apprentice

[1] Sec. 254, as to certificates.

in any court of Admiralty or Vice-Admiralty, or in the Court of Session in *Scotland*, or in any superior court of record in Her Majesty's dominions, unless the owner of the ship is adjudged bankrupt or declared insolvent, or unless the ship is under arrest, or is sold by the authority of any such court as aforesaid, or unless any justices acting under the authority of this Act refer the case to be adjudged by such court, or unless neither the owner nor master is or resides within twenty miles of the place where the seaman or apprentice is discharged or put ashore.

No Seaman to Sue for Wages Abroad, except in Cases of Discharge, or of Danger to Life.

190. No seaman who is engaged for a voyage or engagement which is to terminate in the United Kingdom shall be entitled to sue in any court abroad for wages, unless he is discharged with such sanction as herein required, and with the written consent of the master, or proves such ill-usage on the part of the master, or by his authority, as to warrant reasonable apprehension of danger to the life of such seaman if he were to remain on board; but if any seaman, on his return to the United Kingdom, proves that the master or owner has been guilty of any conduct or default, which but for this enactment would have entitled the seaman to sue for wages before the termination of the voyage or engagement, he shall be entitled to recover, in addition to his wages, such compensation, not exceeding twenty pounds, as the court hearing the case thinks reasonable.

Master to have same Remedies for Wages as Seamen.

191. Every master of a ship shall, so far as the case permits, have the same rights, liens, and remedies for the recovery of his wages which by this Act or by any law or custom any seaman, not being a master, has for the recovery of his wages; and if in any proceeding in any court of Admiralty or Vice-Admiralty touching the claim of a master to wages any right of set-off or counter-claim is set up, it shall be lawful for such court to enter into and adjudicate upon all questions, and to settle all accounts then arising or outstanding and unsettled between the parties to the proceeding, and to direct payment of any balance which is found to be due.

RELIEF TO SEAMEN'S FAMILIES OUT OF POOR-RATES.

Relief to Seamen's Families to be Chargeable on a certain Proportion of their Wages.

192. Whenever, during the absence of any seaman on a voyage, his wife, children, and step-children, or any of them, become or becomes chargeable to any union or parish in the United Kingdom, such union or parish shall be entitled to be reimbursed, out of the wages of such seaman earned during such voyage, any sums properly expended during his absence in the maintenance of his said relations, or any of them, so that such sums do not exceed the following proportions of his said wages; (that is to say),

(1.) If only one of such relations is chargeable, one-half of such wages.

(2.) If two or more of such relations are chargeable, two-thirds of such wages.

But if, during the absence of the seaman, any sums have been paid by the owner to or on behalf of any such relations as aforesaid, under an allotment note given by the seaman in his, her, or their favour, any such claim for reimbursement as aforesaid shall be limited to the excess (if any) of the proportion of the wages hereinbefore mentioned over the sums so paid.

Notice to be given to Owner, and Charge to be enforced on the Return of the Seaman.

193. For the purpose of obtaining such reimbursement as aforesaid, the guardians of the union or parish, where the relief of the poor is administered by guardians, and the overseers of the poor of any other parish in *England*, and the guardians or other persons having the authority of guardians in any union in *Ireland*, and the inspector of the poor in *Scotland*, may give to the owner of the ship in which the seaman is serving a notice in writing, stating the proportion of the seaman's wages upon which it is intended to make the claim, and requiring the owner to retain such proportion in his hands for a period to be therein mentioned, not exceeding twenty-one days from the time of the seaman's return to his port of discharge, and also requiring such owner immediately on such return to give to such guardians, overseers, persons, or inspector notice in writing of such return; and such owner, after receiving such notice as aforesaid, shall be bound to retain the said proportion of wages, and to give notice of the seaman's return accordingly, and shall likewise give to the seaman notice of the intended claim; and the said guardians, overseers, persons, or inspector may upon the seaman's return apply in a summary way, in *England* or *Ireland*, to any two justices having jurisdiction in such union or parish as aforesaid, and in *Scotland* to the sheriff of the county, for an order for such reimbursement as aforesaid; and such justices or sheriff may hear the case, and may make an order for such reimbursement to the whole extent aforesaid, or to such lesser amount as they or he may under the circumstances think fit; and the owner shall pay to such guardians, overseers, persons, or inspector, out of the seaman's wages, the amount so ordered to be paid by way of reimbursement, and shall pay the remainder of the said wages to the seaman; and if no such order as aforesaid is obtained within the period mentioned in the notice so to be given to the owner as aforesaid, the proportion of wages so to be retained by him as aforesaid shall immediately on the expiration of such period, and without deduction, be payable to the seaman.

WAGES AND EFFECTS OF DECEASED SEAMEN.

Masters to take Charge of or Sell Effects of Deceased Seamen which are on Board, and enter the same and Wages due in the Official Log.

194. Whenever any seaman or apprentice belonging to or sent home in any *British* ship, whether a foreign-going ship or a home-trade ship, employed on a voyage which is to terminate in the United Kingdom, dies during such voyage, the master shall take charge of all money, clothes, and effects which he leaves on board, and shall, if he thinks fit, cause all or any of the said clothes and effects to be sold by auction at the mast or other public auction, and shall thereupon sign an entry in the official log-book containing the following particulars; (that is to say),

(1.) A statement of the amount of the money and a description of the effects so left by the deceased.

(2.) In case of a sale, a description of each article sold, and the sum received for each.

(3.) A statement of the sum due to the deceased as wages, and the total amount of the deductions (if any) to be made therefrom.

And shall cause such entry to be attested by a mate and by one of the crew. (See section 21 of 25 and 26 Vict., cap. 63, *post.*)

Such Effects and Wages to be Paid either to Consul or to Shipping-Master, with full Accounts.

195. In the case provided for by the last preceding section, the following rules shall be observed; (that is to say),

(1.) If the ship proceeds at once to any port in the United Kingdom, without touching on the way at any foreign port, the master shall within forty-eight hours after his arrival deliver any such effects as aforesaid remaining unsold, and pay any money which he has taken charge of or received from such sale as aforesaid, and also the balance of wages due to the deceased, to the shipping-master at the port of destination in the United Kingdom.

(2.) If the ship touches and remains for forty-eight hours at some foreign port, or at some port in Her Majesty's dominions abroad, before coming to any port in the United Kingdom, the master shall report the case to the *British* consular officer or officers of customs there, as the case may be, and shall give to such officer any information he requires as to the destination of the ship and probable length of the voyage; and such officer may thereupon, if he considers it expedient so to do, require the said effects, money, and wages to be delivered and paid to him, and shall upon such delivery and payment give to the master a receipt, and the master shall within forty-eight hours after his arrival at his port of destination in the United Kingdom produce the same to the shipping-master there; and such consular officer or officer of customs shall in such case endorse and certify upon the agreement with the crew such particulars with respect to such delivery and payment as the Board of Trade requires.

(3.) If such officer as aforesaid does not require such payment and delivery to be made to him, the master shall take charge of the said effects, money, and wages, and shall within forty-eight hours after his arrival at his port of destination in the United Kingdom deliver and pay the same to the shipping-master there.

(4.) The master shall, in all cases in which any seaman or apprentice dies during the progress of a voyage or engagement, give to the Board of Trade, or to such officer or shipping-master as aforesaid, an account in such form as they respectively require of the effects, money, and wages so to be delivered and paid; and no deductions claimed in such account shall be allowed unless verified, if there is any official log-book, by such entry therein as hereinbefore required, and also by such other vouchers (if any) as may be reason-

ably required by the Board of Trade, or by the officer or shipping-master to whom the account is rendered.

(5.) Upon due compliance with such of the provisions of this section as relate to acts to be done at the port of destination in the United Kingdom, the shipping-master shall grant to the master a certificate to that effect, and no officer of customs shall clear inwards any foreign-going ship without the production of such certificate.

Penalties for not taking Charge of, Remitting, or Accounting for such Moneys and Effects.

196. If any master fails to take such charge of the money or other effects of a seaman or apprentice dying during a voyage, or to make such entries in respect thereof, or to procure such attestation to such entries, or to make such payment or delivery of any money, wages, or effects of any seaman or apprentice dying during a voyage, or to give such account in respect thereof as hereinbefore respectively directed, he shall be accountable for the money, wages, and effects of the seaman or apprentice to the Board of Trade, and shall pay and deliver the same accordingly; and such master shall, in addition, for every such offence incur a penalty not exceeding treble the value of the money or effects not accounted for, or, if such value is not ascertained, not exceeding fifty pounds; and if any such money, wages, or effects are not duly paid, delivered, or accounted for by the master, the owner of the ship shall pay, deliver, and account for the same, and such money and wages and the value of such effects shall be recoverable from him accordingly; and if he fails to account for and pay the same, he shall, in addition to his liability for the said money and value, incur the same penalty which is hereinbefore mentioned as incurred by the master for the like offence; and all money, wages, and effects of any seaman or apprentice dying during a voyage shall be recoverable in the same courts, and by the same modes of proceeding, by which seamen are hereby enabled to recover wages due to them.

Officers of Customs and Consuls to take Charge of Effects left by Seamen Abroad, and to Remit the same and their Wages to Board of Trade.

197. If any such seaman or apprentice as last aforesaid dies abroad, at any place either in or out of Her Majesty's dominions, leaving any money or effects not on board his ship, the chief officer of customs or the *British* consular officer at or nearest to the place, as the case may be, shall claim and take charge of such money and effects; and such officer shall, if he thinks fit, sell all or any of such effects, or any effects of any deceased seaman or apprentice delivered to him under the provisions hereinbefore contained; and every such officer shall, quarterly, or at such other times as the Board of Trade directs, remit to Her Majesty's Paymaster-General all moneys belonging to or arising from the sale of the effects of, or paid as the wages of, any deceased seamen or apprentices which have come to his hands under the provisions hereinbefore contained, and shall render such accounts in respect thereof as the Board of Trade requires. (See section 20 of 25 and 26 Vict., cap. 63.)

Wages and Effects of Seamen Dying at Home to be Paid in certain Cases to Board of Trade.

198. Whenever any seaman or apprentice dies in the United Kingdom, and is at the time of his death entitled to claim from the master or owner of any ship in which he has served any unpaid wages or effects, such master or owner shall pay and deliver, or account for the same, to the shipping master at the port where the seaman or apprentice was discharged or was to have been discharged, or to the Board of Trade, or as it directs.

If less than Fifty Pounds, Wages and Property of Deceased Seamen may be paid over without Probate or Administration to the Persons entitled.

199. If the money and effects of any deceased seaman or apprentice paid, delivered, or remitted to the Board of Trade or its agents, including the moneys received for any part of the said effects which have been sold, either before delivery to the Board of Trade or by its direction, do not exceed in value the sum of fifty pounds, then, subject to the provisions hereinafter contained, and to all such deductions for expenses incurred in respect of the seaman or apprentice or of his said money and effects as the said Board thinks proper to allow, the said Board may, if it thinks fit so to do, pay and deliver the said money and effects either to any claimants who can prove themselves to the satisfaction of the said Board either to be his widow or children, or to be entitled to the effects of the deceased under his will (if any), or under the statutes for the distribution of the effects of intestates, or under any other statute, or at common law, or to be entitled to procure probate, or take out letters of administration or confirmation, although no probate or letters of administration or confirmation have been taken out, and shall be thereby discharged from all further liability in respect of the money and effects so paid and delivered, or may, if it thinks fit so to do, require probate or letters of administration or confirmation to be taken out, and thereupon pay and deliver the said money and effects to the legal personal representatives of the deceased; and all claimants to whom such money or effects are so paid or delivered shall apply the same in due course of administration; and if such money and effects exceed in value the sum of fifty pounds, then, subject to the provisions hereinafter contained, and to deduction for expenses, the Board of Trade shall pay and deliver the same to the legal personal representatives of the deceased.

Mode of Payment under Wills made by Seamen.

200. In cases where the deceased seaman or apprentice has left a will, the Board of Trade shall have the following powers; (that is to say),

(1.) It may in its discretion refuse to pay or deliver any such wages or effects as aforesaid to any person claiming to be entitled thereto, under a will made on board ship, unless such will is in writing, and is signed or acknowledged by the testator, in the presence of the master or first or only mate of the ship, and is attested by such master or mate.

(2.) It may in its discretion refuse to pay or deliver any such wages or effects as aforesaid to any person not being related to the

testator by blood or marriage, who claims to be entitled thereto under a will made elsewhere than on board ship, unless such will is in writing, and is signed or acknowledged by the testator in the presence of two witnesses, one of whom is some shipping-master appointed under this Act, or some minister or officiating minister or curate of the place in which the same is made, or, in a place where there are no such persons, some justice of the peace, or some *British* consular officer, or some officer of customs, and is attested by such witnesses.

Whenever any claim made under a will is rejected by the Board of Trade on account of the said will not being made and attested as hereinbefore required, the wages and effects of the deceased shall be dealt with as if no will had been made.

Provision for Payment of just Claims by Creditors, and for Preventing Fraudulent Claims.

201. The following rules shall be observed with respect to creditors of deceased seamen and apprentices; (that is to say),

(1.) No such creditor shall be entitled to claim from the Board of Trade the wages or effects of any such seaman or apprentice, or any part thereof, by virtue of letters of administration taken out by him, or by virtue of confirmation in *Scotland* as executor-creditor.

(2.) No such creditor shall be entitled by any means whatever to payment of his debt out of such wages and effects, if the debt accrued more than three years before the death of the deceased, or if the demand is not made within two years after such death.

(3.) Subject as aforesaid, the steps to be taken for procuring payment of such a debt shall be as follows; (that is to say), Every person making a demand as creditor shall deliver to the Board of Trade an account in writing in such form as it requires, subscribed with his name, stating the particulars of his demand and the place of his abode, and verified by his declaration made before a justice.

(4.) If before such demand is made any claim to the wages and effects of the deceased, made by any person interested therein, as his widow or child, or under a will, or under the statutes for the distribution of the effects of intestates, or under any other statute, or at common law, has been allowed, the Board of Trade shall give notice to the creditor of the allowance of such person's claim, and the creditor shall thereupon have the same rights and remedies against such person as if he or she had received the said wages and effects as the legal personal representative of the deceased.

(5.) If no claim by any such person has been allowed, the Board of Trade shall proceed to investigate the creditor's account, and may for that purpose require him to prove the same, and to produce all books, accounts, vouchers, and papers relating thereto; and if by such means the creditor duly satisfies the Board of Trade of the justice of the demand, either in the whole or in part, the same shall be allowed and paid accordingly, so far as the assets in the hands

of the Board of Trade will extend for that purpose, and such payment shall discharge the Board of Trade from all further liability in respect of the money so paid; but if such Board is not so satisfied, or if such books, accounts, vouchers, or papers as aforesaid are not produced, and no sufficient reason is assigned for not producing them, the demand shall be disallowed.

(6.) In any case whatever, the Board of Trade may delay the investigation of any demand made by a creditor for the payment of his debt for one year from the time of the first delivery of the demand; and if in the course of that time a claim to the wages and effects of the deceased is made and substantiated as hereinbefore required by any person interested therein, as a widow or child, or under a will, or under the statutes for the distribution of the effects of intestates, or under any other statute, or at common law, the Board of Trade may pay and deliver the same to such person; and thereupon the creditor shall have the same rights and remedies against such person as if he or she had received the same as the legal personal representative of the deceased.

Mode of Dealing with unclaimed Wages of Deceased Seamen.

202. In cases of wages or effects of deceased seamen or apprentices received by the Board of Trade to which no claim is substantiated within six years after the receipt thereof by such Board, it shall be in the absolute discretion of such Board, if any subsequent claim is made, either to allow or to refuse the same; and, subject to the provision hereinafter contained, the Board of Trade shall from time to time pay any moneys arising from the unclaimed wages and effects of deceased seamen, which in the opinion of such Board it is not necessary to retain for the purpose of satisfying claims, into the receipt of Her Majesty's Exchequer in such manner as the Treasury directs, and such moneys shall be carried to and form part of the Consolidated Fund of the United Kingdom.

Punishment for Forgery and False Representations in order to obtain Wages and Property of Deceased Seamen.

203. Every person who, for the purpose of obtaining, either for himself or for another, any money or effects of any deceased seaman or apprentice, forges, assists in forging, or procures to be forged, or fraudulently alters, assists in fraudulently altering, or procures to be fraudulently altered, any document purporting to show or assist in showing a right to such wages or effects, and every person who for the purpose aforesaid makes use of any such forged or altered document as aforesaid, or who for the purpose aforesaid gives or makes, or procures to be given or made, or assists in giving or making or procuring to be given or made, any false evidence or representation, knowing the same to be false, shall be punishable with penal servitude for a term not exceeding four years, or with imprisonment, with or without hard labour, for any period not exceeding two years, or, if summarily prosecuted and convicted, by imprisonment, with or without hard labour, for any period not exceeding six months.

Effects of Seamen Discharged from Navy to be Disposed of by Accountant-General of Navy.

204. In the case of seamen invalided or discharged from any of Her Majesty's ships, and sent home in merchant ships, any moneys or effects belonging to them which are paid, remitted, or delivered to the Board of Trade or its agents, under the provisions hereinbefore contained, shall be paid over and disposed of in such manner as the Accountant-General of Her Majesty's navy directs.

LEAVING SEAMEN ABROAD.

On Discharge of Seamen Abroad, by Sale of Ship or otherwise. Certificates of Discharge to be given, and Seamen to be sent Home at Expense of Owner.

205. Whenever any *British* ship is transferred or disposed of at any place out of Her Majesty's dominions, and any seaman or apprentice belonging thereto does not, in the presence of some *British* consular officer, or, if there is no such consular officer there, in the presence of one or more respectable *British* merchants residing at the place, and not interested in the said ship, signify his consent in writing to complete the voyage if continued, and whenever the service of any seaman or apprentice belonging to any *British* ship terminates at any place out of Her Majesty's dominions, the master shall give to each such seaman or apprentice a certificate of discharge in the form sanctioned by the Board of Trade as aforesaid, and in the case of any certificated mate whose certificate he has retained, shall return such certificate to him, and shall also, besides paying the wages to which such seaman or apprentice is entitled, either provide him with adequate employment on board some other *British* ship bound to the port in Her Majesty's dominions at which he was originally shipped, or to such other port in the United Kingdom as is agreed upon by him, or furnish the means of sending him back to such port, or provide him with a passage home, or deposit with such consular officer or such merchant or merchants as aforesaid such a sum of money as is by such officer or merchants deemed sufficient to defray the expenses of his subsistence and passage home; and such consular officer or merchants shall endorse upon the agreement of the ship which the seaman or apprentice is leaving the particulars of such payment, provision, or deposit; and if the master refuses or neglects to comply with the requirements of this section, such expenses as last aforesaid, if defrayed by such consular officer or by any other person, shall, unless such seaman or apprentice has been guilty of barratry, be a charge upon the ship to which such seaman or apprentice belonged, and upon the owner for the time being thereof, and may be recovered against such owners, with costs, at the suit of the consular officer or other person defraying such expenses, or, in case the same has been allowed to the consular officer out of the public moneys, as a debt due to Her Majesty, either by ordinary process of law, or in the manner in which seamen are hereby enabled to recover wages; and such expenses, if defrayed by the seaman or apprentice, shall be recoverable as wages due to him.

Forcing Seamen on Shore a Misdemeanour.

206. If the master or any other person belonging to any *British* ship wrongfully forces on shore and leaves behind, or otherwise wilfully and

wrongfully leaves behind in any place, on shore or at sea, in or out of Her Majesty's dominions, any seaman or apprentice belonging to such ship before the completion of the voyage for which such person was engaged, or the return of the ship to the United Kingdom, he shall for each such offence be deemed guilty of a misdemeanour.

No Seaman to be Discharged or left Abroad without Certificate of some Functionary.

207. If the master of any *British* ship does any of the following things; (that is to say),

(1.) Discharges any seaman or apprentice in any place situate in any *British* possession abroad (except the possession in which he was shipped), without previously obtaining the sanction in writing, endorsed on the agreement of some public shipping-master or other officer duly appointed by the local Government in that behalf, or (in the absence of any such functionary) of the chief officer of customs resident at or near the place where the discharge takes place:

(2.) Discharges any seaman or apprentice at any place out of Her Majesty's dominions without previously obtaining the sanction, so endorsed as aforesaid, of the *British* consular officer there, or (in his absence) of two respectable merchants resident there:

(3.) Leaves any seaman or apprentice at any place situate in any *British* possession abroad, on any ground whatever, without previously obtaining a certificate in writing, so endorsed as aforesaid, from such officer or person as aforesaid, stating the fact and the cause thereof, whether such cause be unfitness or inability to proceed to sea, or desertion or disappearance:

(4.) Leaves behind any seaman or apprentice at any place out of Her Majesty's dominions, on shore or at sea, on any ground whatever, without previously obtaining the certificate, endorsed in manner and to the effect last aforesaid, of the *British* consular officer there, or (in his absence) of two respectable merchants, if there is any such at or near the place where the ship then is:

He shall for each such default be deemed guilty of a misdemeanour; and the said functionaries shall, and the said merchants may, examine into the grounds of such proposed discharge, or into the allegation of such unfitness, inability, desertion, or disappearance as aforesaid, in a summary way, and may for that purpose, if they think fit so to do, administer oaths, and may either grant or refuse such sanction or certificate as appears to them to be just.

Proof of such Certificate to be upon the Master.

208. Upon the trial of any information, indictment, or other proceeding against any person for discharging or leaving behind any seaman or apprentice contrary to the provisions of this Act, it shall lie upon such person either to produce the sanction or certificate hereby required, or to prove that he had obtained the same previously to having discharged or left behind such seaman or apprentice, or that it was impracticable for him to obtain such sanction or certificate.

Wages to be Paid when Seamen are left Behind on Ground of Inability.

209. Every master of any *British* ship who leaves any seaman or apprentice on shore at any place abroad in or out of Her Majesty's dominions, under a certificate of his unfitness or inability to proceed on the voyage, shall deliver to one of the functionaries aforesaid, or (in the absence of such functionaries) to the merchants by whom such certificate is signed, or, if there be but one respectable merchant resident at such place, to him, a full and true account of the wages due to such seaman or apprentice, such account when delivered to a consular officer to be in duplicate, and shall pay the same either in money or by bill drawn upon the owner; and in the case of every bill so drawn, such functionary, merchants, or merchant as aforesaid, shall by endorsement certify thereon that the same is drawn for money due on account of a seaman's wages, and shall also endorse the amount for which such bill is drawn, with such further particulars in respect of the case as the Board of Trade requires, upon the agreement of the ship; and every such master as aforesaid who refuses or neglects to deliver a full account of such wages, and pay the amount thereof in money or by bill, as hereinbefore required, shall for every such offence or default be liable, in addition to the payment of the wages, to a penalty not exceeding ten pounds; and every such master who delivers a false account of such wages shall for every such offence, in addition to the payment of the wages, incur a penalty not exceeding twenty pounds. (See section 19 of 25 and 26 Vict., cap. 63, *post.*)

Such Wages to be treated as Money due to the Seamen, subject to Payment of Expense of their Subsistence and Passage Home.

210. Every such payment as last aforesaid, whether by bill or in money, shall, if made in any *British* possession, be made to the seaman or apprentice himself, and, if made out of Her Majesty's dominions, to the consular officer, who shall, if satisfied with the account, endorse on one of the duplicates thereof a receipt for the amount paid or bill delivered, and shall return the same to the master; and the master shall, within forty-eight hours after his return to his port of destination in the United Kingdom, deliver the same to the shipping-master there; and the consular officer shall retain the other duplicate of the said account, and shall, if the seaman or apprentice subsequently obtains employment at or otherwise quits the port, deduct out of the sum received by him as aforesaid any expenses which have been incurred by him in respect of the subsistence of the seaman or apprentice under the provisions herein contained, except such as the master or owner of the ship is hereby required to pay, and shall pay the remainder to the seaman or apprentice, and shall also deliver to him an account of the sums so received and expended on his behalf; and shall, if the seaman or apprentice dies before his ship quits the port, deal with the same in the manner hereinafter specified in that behalf, and shall, if the seaman or apprentice is sent home at the public expense under the provisions herein contained, account for the amount received to the Board of Trade; and such amount shall, after deducting any expenses which have been duly incurred in respect of such seaman or apprentice, except such as the master or owner of the ship is hereby required to pay, be dealt with as wages to which he is entitled, and shall be paid accordingly.

Distressed Seamen found Abroad may be Relieved and sent Home at the Public Expense.

211. The governors, consular officers, and other officers of Her Majesty in foreign countries shall, and, in places where there are no such governors or officers, any two resident *British* merchants may, provide for the subsistence of all seamen or apprentices, being subjects of Her Majesty, who have been shipwrecked, discharged, or left behind at any place abroad, whether from any ship employed in the merchant service or from any of Her Majesty's ships, or who have been engaged by any person acting either as principal or agent to serve in any ship belonging to any foreign power or to the subject of any foreign state, and who are in distress in any place abroad, until such time as they are able to provide them with a passage home, and for that purpose shall cause such seamen or apprentices to be put on board some ship belonging to any subject of Her Majesty bound to any port of the United Kingdom, or to the *British* possession to which they belong (as the case requires), which is in want of men to make up its complement, and in default of any such ship shall provide them with a passage home as soon as possible in some ship belonging to a subject of Her Majesty so bound as aforesaid, and shall endorse on the agreement of any ship on board of which any seaman or apprentice is so taken or sent the name of every person so sent on board thereof, with such particulars concerning the case as the Board of Trade requires, and shall be allowed for the subsistence of any such seaman or apprentice such sum *per diem* as the Board of Trade from time to time appoints; and the amount due in respect of such allowance shall be paid out of any moneys applicable to the relief of distressed *British* seamen, and granted by Parliament for the purpose, on the production of the bills of the disbursements, with the proper vouchers.

Masters of British Ships compelled to take them.

212. The master of every *British* ship so bound as aforesaid shall receive and afford a passage and subsistence to all seamen or apprentices whom he is required to take on board his ship under the provisions hereinbefore contained, not exceeding one for every fifty tons burden, and shall during the passage provide every such seaman or apprentice with a proper berth or sleeping place, effectually protected against sea and weather; and on the production of a certificate signed by any governor, consular officer, or merchants by whose directions any such seaman or apprentice was received on board, specifying the number and names of such seamen or apprentices, and the time when each of them respectively was received on board, and on a declaration made by such person before a justice, and verified by the Registrar-General of Seamen, stating the number of days during which each seaman or apprentice received subsistence and was provided for as aforesaid on board his ship, and stating also the number of men and boys forming the complement of his crew, and the number of seamen and apprentices employed on board his ship during such time, and every variation (if any) of such number, such person shall be entitled to be paid out of the said moneys applicable to the relief of distressed *British* seamen, in respect of the subsistence and passage of every seaman or apprentice so conveyed,

subsisted, and provided for by him, exceeding the number (if any) wanted to make up the complement of his crew, such sum *per diem* as the Board of Trade from time to time appoints; and if any person having charge of any such ship fails or refuses to receive on board his ship, or to give a passage home, or subsistence to, or to provide for any such seaman or apprentice as aforesaid, contrary to the provisions of this Act, he shall incur a penalty not exceeding one hundred pounds for each seaman or apprentice with respect to whom he makes such default or refusal.

Power to Sue for the Amount advanced for the Relief of Seamen left Abroad.

213. If any seaman or apprentice belonging to any *British* ship is discharged or left behind at any place out of the United Kingdom, without full compliance on the part of the master with all the provisions in that behalf in this Act contained, and becomes distressed, and is relieved under the provisions of this Act, or if any subject of Her Majesty, after having been engaged by any person (whether acting as principal or agent) to serve in any ship belonging to any foreign power, or to the subject of any foreign power, becomes distressed, and is relieved as aforesaid, the wages (if any) due to such seaman, or apprentice, and all expenses incurred for his subsistence, necessary clothing, conveyance home, and burial, in case he should die abroad before reaching home, shall be a charge upon the ship, whether *British* or foreign, to which he so belonged as aforesaid; and the Board of Trade may, in the name of Her Majesty (besides suing for any penalties which may have been incurred), sue for and recover the said wages and expenses, with costs, either from the master of such ship as aforesaid, or from the person who is owner thereof for the time being, or, in the case of such engagement as aforesaid for service in a foreign ship, from such master or owner, or from the person by whom such engagement was so made as aforesaid; and such sums shall be recoverable either in the same manner as other debts due to Her Majesty, or in the same manner and by the same form and process in which wages due to the seaman would be recoverable by him; and in any proceedings for that purpose, production of the account (if any) to be furnished as hereinbefore is provided in such cases, together with proof of payment by the Board of Trade or by the Paymaster-General of the charges incurred on account of any such seaman, apprentice, or other person, shall be sufficient evidence that he was relieved, conveyed home, or buried (as the case may be) at Her Majesty's expense. (See section 16 of the 18 and 19 Vict., cap. 91, and section 22 of the 25 and 26 Vict., cap. 63, *post.*)

VOLUNTEERING INTO THE NAVY.

Seamen allowed to Leave their Ships in order to enter the Navy.

214. Any seaman may leave his ship for the purpose of forthwith entering into the naval service of Her Majesty, and such leaving his ship shall not be deemed a desertion therefrom, and shall not render him liable to any punishment or forfeiture whatever; and all stipulations introduced into any agreement whereby any seaman is declared to incur any forfeiture or be exposed to any loss in case he enters into Her Majesty's naval service shall be void, and every master or owner who causes any such stipulation to be so introduced shall incur a penalty not exceeding twenty pounds.

Clothes to be Delivered at once. Wages to be given to the Queen's Officer on Account of the Seaman.

215. Whenever any seaman, without having previously committed any act amounting to and treated by the master as desertion, leaves his ship in order to enter into the naval service of Her Majesty, and is received into such service, the master shall deliver to him his clothes and effects on board such ship, and shall pay the proportionate amount of his wages down to the time of such entry, subject to all just deductions, as follows; (that is to say), The master of the said ship shall pay the same to the officer authorised to receive such seaman into Her Majesty's service, either in money or by bill drawn upon the owner, and payable at sight to the order of the Accountant-General of the Navy; and the receipt of such officer shall be a discharge for the money or bill so given; and such bill shall be exempt from stamp duty; and if such wages are paid in money, such money shall be credited in the muster-book of the ship to the account of the said seaman; and if such wages are paid by bill, such bill shall be noted in the said muster-book and shall be sent to the said Accountant-General, who shall present the same or cause the same to be presented for payment, and shall credit the produce thereof to the account of the said seaman; and such money or produce (as the case may be) shall not be paid to the said seaman until the time at which he would have been entitled to receive the same if he had remained in the service of the ship which he had so quitted as aforesaid; and if any such bill is not duly paid when presented, the said Accountant-General, or the seaman on whose behalf the same is given, may sue thereon, or may recover the wages due by all or any of the means by which wages due to merchant seamen are recoverable; and if, upon any seaman leaving his ship in the manner and for the purpose aforesaid, the master fails to deliver his clothes and effects, or to pay his wages as hereinbefore required, he shall, in addition to his liability to pay and deliver the same, incur a penalty not exceeding twenty pounds; provided that no officer who receives any such bill as aforesaid shall be subject to any liability in respect thereof, except for the safe custody thereof until sent to the said Accountant-General as aforesaid.

Repayment to Owner of Advance Paid and not duly Earned.

216. If, upon any seaman leaving his ship for the purpose of entering the naval service of Her Majesty, the owner or master of such ship shows to the satisfaction of the Admiralty that he has paid, or properly rendered himself liable to pay, an advance of wages to or on account of such seaman, and that such seaman has not at the time of quitting his ship duly earned such advance by service therein, and, in the case of such liability as aforesaid, if such owner or master actually satisfies the same, it shall be lawful for the Admiralty to pay to such owner or master so much of such advance as has not been duly earned, and to deduct the sum so paid from the wages of the seaman earned or to be earned in the naval service of Her Majesty.

If New Seamen are Engaged instead of the Original Seamen, the Owner may apply for Repayment of any extra Expense he has been put to.

217. If, in consequence of any seaman so leaving his ship without the consent of the master or owner thereof, it becomes necessary for the safety

and proper navigation of the said ship to engage a substitute or substitutes, and if the wages or other remuneration paid to such substitute or substitutes for subsequent service exceed the wages or remuneration which would have been payable to the said seaman under his agreement for similar service, the master or owner of the said ship may apply to the Registrar of the High Court of Admiralty in *England* for a certificate authorising the repayment of such excess; and such application shall be in such form, and shall be accompanied by such documents, and by such statements, whether on oath or otherwise, as the judge of the said court from time to time directs.

Application how to be decided on, and Amount of Repayment how to be ascertained.

218. The said registrar shall, upon receiving any such application as aforesaid, give notice thereof in writing, and of the sum claimed, to the Secretary to the Admiralty, and shall proceed to examine the said application, and may call upon the Registrar-General of Seamen to produce any papers in his possession relating thereto, and may call for further evidence; and if the whole of the claim appears to him to be just, he shall give a certificate accordingly; but if he considers that such claim or any part thereof is not just, he shall give notice of such his opinion in writing under his hand to the person making the said application, or his attorney or agent; and if within sixteen days from the giving of such notice such person does not leave or cause to be left at the office of the registrar of the said court a written notice demanding that the said application shall be referred to the judge of the said court, then the said registrar shall finally decide thereon, and certify accordingly; but if such notice is left as aforesaid, then the said application shall stand referred to the said judge in his chambers, and his decision thereon shall be final, and the said registrar shall certify the same accordingly; and the said registrar and judge respectively shall in every proceeding under this Act have full power to administer oaths, and to exercise all the ordinary powers of the court, as in any other proceeding within its jurisdiction; and the said registrar or judge (as the case may be) may, if he thinks fit, allow for the costs of any proceeding under this Act any sum not exceeding five pounds for each seaman so quitting his ship as aforesaid; and such sum shall be added to the sum allowed, and shall be certified by the said registrar accordingly.

Accountant-General to pay Sums when ascertained.

219. Every certificate so given shall be sent by post or otherwise to the person making the application, his attorney or agent, and a copy thereof shall be sent to the Accountant-General of the Navy; and such Accountant-General shall, upon delivery to him of the said original certificate, together with a receipt in writing purporting to be a receipt from the master or owner making the application, pay to the person delivering the same out of the moneys applicable to the naval service of Her Majesty, and granted by Parliament for the purpose, the amount mentioned in such certificate; and such certificate and receipt shall absolutely discharge the said Accountant-General and Her Majesty from all liability in respect of the moneys so paid or of the said application.

Penalty for Forgery and False Representations in support of such Applications.

220. Every person who, in making or supporting any such application as aforesaid to the Registrar of the High Court of Admiralty, forges, assists in forging, or procures to be forged, or fraudulently alters, assists in fraudulently altering, or procures to be fraudulently altered, any document, and every person who in making or supporting any such application presents or makes use of any such forged or altered document, or who in making or supporting any such application makes or gives, or assists in making or giving, or procures to be made or given, any false evidence or representation, knowing the same to be false, shall be deemed guilty of a misdemeanour.

PROVISIONS, HEALTH, AND ACCOMMODATION.

Survey of Provisions and Water on Complaint made.

221. Any three or more of the crew of any *British* ship may complain to any officer in command of any of Her Majesty's ships, or any *British* consular officer, or any shipping-master, or any chief officer of customs, that the provisions or water for the use of the crew are at any time of bad quality, unfit for use, or deficient in quantity; and such officer may thereupon examine the said provisions or water, or cause them to be examined; and if on examination such provisions or water are found to be of bad quality and unfit for use, or to be deficient in quantity, the person making such examination shall signify the same in writing to the master of the ship; and if such master does not thereupon provide other proper provisions or water in lieu of any so signified to be of bad quality and unfit for use, or does not procure the requisite quantity of any so signified to be insufficient in quantity, or uses any provisions or water which have been so signified as aforesaid to be of bad quality and unfit for use, he shall in every such case incur a penalty not exceeding twenty pounds; and upon every such examination as aforesaid, the officers making or directing the same shall enter a statement of the result of the examination in the official log, and shall send a report thereof to the Board of Trade, and such report, if produced out of the custody of such Board or its officers, shall be received in evidence in any legal proceeding.

Forfeiture for Frivolous Complaint.

222. If the officer to whom any such complaint as last aforesaid is made certifies in such statement as aforesaid that there was no reasonable ground for such complaint, each of the parties so complaining shall be liable to forfeit to the owner out of his wages a sum not exceeding one week's wages.

Allowance for Short or Bad Provisions.

223. In the following cases (that is to say),

(1.) If during a voyage the allowance of any of the provisions which any seaman has by his agreement stipulated for is reduced (except in accordance with any regulations for reduction by way of punishment contained in the agreement, and also except for any time during which such seaman wilfully and without sufficient cause

refuses or neglects to perform his duty, or is lawfully under confinement for misconduct, either on board or on shore) :

(2.) If it is shown that any of such provisions are or have during the voyage been bad in quality and unfit for use :

The seaman shall receive by way of compensation for such reduction or bad quality, according to the time of its continuance, the following sums, to be paid to him in addition to and to be recoverable as wages ; (that is to say),

(1.) If his allowance is reduced by any quantity not exceeding one-third of the quantity specified in the agreement, a sum not exceeding fourpence a day :

(2.) If his allowance is reduced by more than one-third of such quantity, eightpence a day :

(3.) In respect of such bad quality as aforesaid, a sum not exceeding one shilling a day.

But if it is shown to the satisfaction of the court before which the case is tried that any provisions the allowance of which has been reduced could not be procured or supplied in proper quantities, and that proper and equivalent substitutes were supplied in lieu thereof, the court shall take such circumstances into consideration, and shall modify or refuse compensation as the justice of the case may require.

Medicines, Lime or Lemon Juice, Sugar, and Vinegar, to be Provided and kept on Board certain Ships.

224. *The following rules shall be observed with respect to medicines, medical stores, and antiscorbutics ; (that is to say),*

(1.) *The Board of Trade shall from time to time issue and cause to be published a scale of medicines and medical stores suitable to accidents and diseases arising on sea voyages.*

(2.) *The owner of every ship navigating between the United Kingdom and any place out of the same shall provide and cause to be constantly kept on board such ship a supply of such medicines and medical stores in accordance with the said scale.*

(3.) *The master or owner of every foreign-going ship (except those bound to* European *ports or to ports in the* Mediterranean Sea, *and also except such ships or classes of ships bound to ports on the eastern coast of* America *north of the thirty-fifth degree of north latitude, and to any islands or places in the* Atlantic Ocean *north of the same limit, as the Board of Trade may from time to time exempt from this enactment) shall also provide and cause to be kept on board such ship a sufficient quantity of lime or lemon juice, or of such articles as the Board of Trade sanctions as substitutes for lime or lemon juice, and also of sugar and vinegar.*

(4.) *The master of every such ship as last aforesaid shall serve out the lime or lemon juice, or other such articles as aforesaid, and sugar and vinegar to the crew, whenever they have consumed salt provisions for ten days, and so long afterwards as such consumption continues, the lime or lemon juice and sugar daily at the rate of half an ounce each per day, and the vinegar weekly at the rate of half a pint per week, to each member of the crew.*

And if in any such ship as aforesaid such medicines, medical stores, lime or lemon juice or other articles, sugar and vinegar, as are hereinbefore required, are not provided and kept on board as hereinbefore required, the master or owner shall incur a penalty not exceeding twenty pounds; and if the master of any such ship as aforesaid neglects to serve out the lime or lemon juice or other articles, sugar or vinegar, in the case and manner hereinbefore directed, he shall for each such offence incur a penalty not exceeding five pounds; and if any master is convicted in either of the last-mentioned penalties, and it appears that the offence is owing to the act or default of the owner, such master may recover the amount of such penalty and the costs incurred by him from the owner. (Repealed by section 3 of 30 and 31 Vict., cap. 124. See now section 4 of that Act, *post.*)

Masters to keep Weights and Measures on Board.

225. Every master shall keep on board proper weights and measures for the purpose of determining the quantities of the several provisions and articles served out, and shall allow the same to be used at the time of serving out such provisions and articles in the presence of a witness whenever any dispute arises about such quantities, and in default shall for every offence incur a penalty not exceeding ten pounds.

Board of Trade and Local Boards may appoint Inspectors of Medicines, who are to see that Ships are properly Provided.

226. Any Local Marine Board may, upon being required by the Board of Trade so to do, appoint and remove a medical inspector of ships for the port, and may fix his remuneration, such remuneration to be subject to the control of the Board of Trade; and at ports where there are no Local Marine Boards, the Board of Trade may appoint and remove such inspectors and fix their remuneration; and it shall be the duty of such inspectors to inspect the medicines, medical stores, lime or lemon juice, or other articles, sugar and vinegar, required to be kept on board any such ships as aforesaid; and such inspection, if made at places where there are Local Marine Boards, shall be made under their direction, and also in any special cases under the direction of the Board of Trade, and if made at places where there are no Local Marine Boards, shall be made under the direction of the Board of Trade; and such medical inspectors shall, for the purposes of such inspection, have the same powers as the inspectors appointed by the Board of Trade under the first part of this Act; but every such inspector, if required by timely notice in writing from the master, owner, or consignee, shall make his inspection three days at least before the ship proceeds to sea, and if the result of the inspection is satisfactory, shall not again make inspection before the commencement of the voyage, unless he has reason to suspect that some of the articles inspected have been subsequently removed, injured, or destroyed; and whenever any such medical inspector is of opinion that in any ship hereby required to carry such articles as aforesaid the same or any of them are deficient in quantity or quality, or are placed in improper vessels, he shall signify the same in writing to the chief officer of customs of the port where such ship is lying, and also to the master, owner, or consignee thereof, and thereupon the master of such

ship, before proceeding to sea, shall produce to such chief officer of customs a certificate under the hand of such medical inspector, or of some other medical inspector, to the effect that such deficiency has been supplied or remedied, or that such improper vessels have been replaced by proper vessels, as the case may require; and such chief officer of customs shall not grant a clearance for such ship without the production of such certificate, and if such ship attempts to go to sea without a clearance, may detain her until such certificate is produced; and if such ship proceeds to sea without the production of such certificate, the owner, master, or consignee thereof shall incur a penalty not exceeding twenty pounds.

Penalty for Selling bad Drugs for Ships.

227. *Any person who sells or supplies any medicines, medical stores, lime or lemon juice, of bad quality, for the use of any ship, shall for each such offence incur a penalty not exceeding twenty pounds.* (Repealed by section 3 of 30 and 31 Vict., cap. 124. See now section 5 of that Act, and also 30 and 31 Vict., cap. 124, sec. 6, *post.*)

Expense of Medical Attendance and Subsistence in case of Illness, and of Burial in case of Death, how to be Defrayed.

228. The following rules shall be observed with respect to expenses attendant on illness and death; (that is to say),

(1.) If the master or any seaman or apprentice receives any hurt or injury in the service of the ship to which he belongs, the expense of providing the necessary surgical and medical advice, with attendance and medicines, and of his subsistence until he is cured, or dies, or is brought back to some port in the United Kingdom, if shipped in the United Kingdom, or if shipped in some *British* possession to some port in such possession, and of his conveyance to such port, and the expense (if any) of his burial, shall be defrayed by the owner of such ship, without any deduction on that account from the wages of such master, seaman, or apprentice.

(2.) If the master or any seaman or apprentice is, on account of any illness, temporarily removed from his ship for the purpose of preventing infection, or otherwise for the convenience of the ship, and subsequently returns to his duty, the expense of such removal, and of providing the necessary advice with attendance and medicines, and of his subsistence whilst away from the ship, shall be defrayed in like manner.

(3.) The expense of all medicines and surgical or medical advice and attendance given to any master, seaman, or apprentice whilst on board his ship shall be defrayed in like manner.

(4.) In all other cases any reasonable expenses duly incurred by the owner for any seaman in respect of illness, and also any reasonable expenses duly incurred by the owner in respect of the burial of any seaman or apprentice who dies whilst on service, shall, if duly proved, be deducted from the wages of such seaman or apprentice. (See also sections 7, 8, and 10 of 30 and 31 Vict., cap. 124, *post.*)

Expenses, if paid by Consul, to be Recoverable from Owner.

229. If any such expenses in respect of the illness, injury, or hurt of any seaman or apprentice, as are to be borne by the owner, are paid by any consular officer or other person on behalf of Her Majesty, or if any other expenses in respect of the illness, injury, or hurt of any seaman or apprentice whose wages are not accounted for to such officer under the provisions hereinbefore contained in that behalf are so paid, such expenses shall be repaid to such officer or other person by the master of the ship, and if not so repaid, the amount thereof, with costs, shall be a charge upon the ship, and be recoverable from the said master or from the owner of the ship for the time being as a debt due to Her Majesty, and shall be recoverable either by ordinary process of law or in the manner in which seamen are hereby enabled to recover wages; and in any proceeding for the recovery thereof, the production of a certificate of the facts, signed by such officer or other person, together with such vouchers (if any) as the case requires, shall be sufficient proof that the said expenses were duly paid by such consular officer or other person as aforesaid.

Certain Ships to carry Medical Practitioners.

230. Every foreign-going ship having one hundred persons or upwards on board shall carry on board as part of her complement some person duly authorised by law to practise as physician, surgeon, or apothecary; and in default the owner shall, for every voyage of any such ship made without such medical practitioner, incur a penalty not exceeding one hundred pounds: Provided that nothing herein contained shall in anywise affect any provision contained in the "Passengers Act, 1852," concerning the carriage of medical practitioners by the class of ships therein named passenger-ships, nor shall any passenger-ship, if not thereby required to carry a medical practitioner, be hereby required to do so.

Place appropriated to Seamen to have a certain Space for each Man, and to be properly constructed and kept clear.

231. *The following rules shall be observed with respect to accommodation on board; (that is to say),*

(1.) *Every place in any ship occupied by seamen or apprentices, and appropriated to their use, shall have for every such seaman or apprentice, if they sleep in hammocks, a space of not less than nine superficial feet, and if they do not sleep in hammocks, a space of not less than twelve superficial feet, measured on the deck or floor of such place.*

(2.) *Every such place shall either be six feet in height from deck to deck, or shall have for every seaman and apprentice, if they sleep in hammocks, a space of not less than fifty-four cubic feet, and if they do not sleep in hammocks, a space of not less than seventy-two cubic feet.*

(3.) *Every such place shall be kept free from stores or goods of any kind, not being the personal property of the crew in use during the voyage.*

(4.) *Every such place shall be properly caulked, and in all other respects securely and properly constructed and well ventilated.*

And if any such place in any ship is not in the whole sufficiently large to give such space for each seaman and apprentice as hereinbefore required, or is not properly caulked, and in all other respects securely and properly constructed and well ventilated, the owner shall, for every such failure to comply with the provisions of this section, incur a penalty not exceeding twenty pounds; and if any such space as aforesaid is not kept free from goods and stores as aforesaid, the master shall, for every such failure to comply with the provisions of this section, incur a penalty not exceeding ten pounds. (Repealed by section 3 of 30 and 31 Vict., cap. 124. See now section 9 of that Act, *post.*)

POWER OF MAKING COMPLAINT.

Seamen to be allowed to go Ashore to make Complaint to a Justice.

232. If any seaman or apprentice whilst on board any ship states to the master that he desires to make complaint to a justice of the peace, or consular officer, or naval officer in command of any of Her Majesty's ships, against the master or any of the crew, the said master shall, if the ship is then at a place where there is a justice or any such officer as aforesaid, so soon as the service of the ship will permit, and if the ship is not then at such a place, so soon after her first arrival at such a place as the service of the ship will permit, allow such seaman or apprentice to go ashore, or send him ashore in proper custody, so that he may be enabled to make such complaint, and shall, in default, incur a penalty not exceeding ten pounds.

PROTECTION OF SEAMEN FROM IMPOSITION.

Sale of and Charge upon Wages to be Invalid.

233. No wages due or accruing to any seaman or apprentice shall be subject to attachment or arrestment from any court; and every payment of wages to a seaman or apprentice shall be valid in law, notwithstanding any previous sale or assignment of such wages, or of any attachment, incumbrance, or arrestment thereon; and no assignment or sale of such wages, or of salvage made prior to the accruing thereof, shall bind the party making the same; and no power of attorney or authority for the receipt of any such wages or salvage shall be irrevocable.

No Debt exceeding Five Shillings recoverable till End of Voyage.

234. No debt exceeding in amount five shillings, incurred by any seaman after he has engaged to serve, shall be recoverable until the service agreed for is concluded.

Penalty for Overcharges by Lodging-house Keepers.

235. If any person demands or receives from any seaman or apprentice to the sea-service payment in respect of his board or lodging in the house of such person for a longer period than such seaman or apprentice has actually resided or boarded therein, he shall incur a penalty not exceeding ten pounds.

Penalty for detaining Seaman's Effects.

236. If any person receives or takes into his possession or under his control any moneys, documents, or effects of any seaman or apprentice to the sea-service, and does not return the same or pay the value thereof, when required by such seaman or apprentice, subject to such deduction as may be justly due to him from such seaman or apprentice in respect of board or lodging or otherwise, or absconds therewith, he shall incur a penalty not exceeding ten pounds, and any two justices may, besides inflicting such penalty, by summary order direct the amount or value of such moneys, documents, or effects, subject to such deduction as aforesaid, to be forthwith paid to such seaman or apprentice.

Persons not to go on Board before the final Arrival of Ship without Permission.

237. Every person who, not being in Her Majesty's service, and not being duly authorised by law for the purpose, goes on board any ship about to arrive at the place of her destination, before her actual arrival in dock or at the place of her discharge, without the permission of the master, shall for every such offence incur a penalty not exceeding twenty pounds; and the master or person in charge of such ship may take any such person so going on board as aforesaid into custody, and deliver him up forthwith to any constable or peace-officer, to be by him taken before a justice or justices or the sheriff of the county in *Scotland*, and to be dealt with according to the provisions of this Act.

Penalty for Solicitations by Lodging-house Keepers.

238. If, within twenty-four hours after the arrival of any ship at any port in the United Kingdom, any person then being on board such ship solicits any seaman to become a lodger at the house of any person letting lodgings for hire, or takes out of such ship any effects of any seaman, except under his personal direction and with the permission of the master, he shall for every such offence incur a penalty not exceeding five pounds.

DISCIPLINE.

Misconduct endangering Ship or Life or Limb a Misdemeanour.

239. Any master of, or any seaman or apprentice belonging to, any *British* ship who by wilful breach of duty, or by neglect of duty, or by reason of drunkenness, does any act tending to the immediate loss, destruction, or serious damage of such ship, or tending immediately to endanger the life or limb of any person belonging to or on board of such ship, or who by wilful breach of duty, or by neglect of duty, or by reason of drunkenness, refuses or omits to do any lawful act proper and requisite to be done by him for preserving such ship from immediate loss, destruction, or serious damage, or for preserving any person belonging to or on board of such ship from immediate danger to life or limb, shall for every such offence be deemed guilty of a misdemeanour.

Power of Admiralty Courts to remove Master.

240. Any court having Admiralty jurisdiction in any of Her Majesty's dominions may, upon application by the owner of any ship being within the jurisdiction of such court, or by the part-owner or consignee, or by the agent of the owner, or by any certificated mate, or by one-third or more of the crew of such ship, and upon proof on oath to the satisfaction of such court that the removal of the master of such ship is necessary, remove him accordingly; and may also, with the consent of the owner or his agent, or the consignee of the ship, or, if there is no owner or agent of the owner or consignee of the ship within the jurisdiction of the court, then without such consent, appoint a new master in his stead; and may also make such order, and may require such security in respect of costs in the matter, as it thinks fit.

Power to investigate Cases of alleged Incompetency and Misconduct.

241. If the Board of Trade or any Local Marine Board has reason to believe that any master or mate is from incompetency or misconduct unfit to discharge his duties, the Board of Trade may either institute an investigation or may direct the Local Marine Board at or nearest to the place at which it may be convenient for the parties and witnesses to attend to institute the same, and thereupon such persons as the Board of Trade may appoint for the purpose, or, as the case may be, the Local Marine Board, shall with the assistance of a local stipendiary magistrate (if any), and if there is no such magistrate, of a competent legal assistant to be appointed by the Board of Trade, conduct the investigation, and may summon the master or mate to appear, and shall give him full opportunity of making a defence either in person or otherwise, and shall for the purpose of such investigation have all the powers given by the first part of this Act to inspectors appointed by the Board of Trade, and may make such order with respect to the costs of such investigation as they may deem just; and shall on the conclusion of the investigation make a report upon the case to the Board of Trade; and in cases where there is no Local Marine Board before which the parties and witnesses can conveniently attend, or where such Local Marine Board is unwilling to institute the investigation, the Board of Trade may direct the same to be instituted before two justices or a stipendiary magistrate; and thereupon such investigation shall be conducted, and the results thereof reported, in the same manner and with the same powers in and with which formal investigations into wrecks and casualties are directed to be conducted, and the results thereof reported, under the provisions contained in the eighth part of this Act, save only that, if the Board of Trade so directs, the person bringing the charge of incompetency or misconduct to the notice of the Board of Trade shall be deemed to be the party having the conduct of the case. (As to certificated engineers, see section 11 of 25 and 26 Vict., cap. 63, *post.*)

Board of Trade may Cancel or Suspend Certificates in certain Cases.

242. The Board of Trade may suspend or cancel the certificate (whether of competency or service) of any master or mate in the following cases; (that is to say),

(1.) If, upon any investigation made in pursuance of the last preceding section, he is reported to be incompetent, or to have been guilty of any gross act of misconduct, drunkenness, or tyranny.

(2.) If upon any investigation conducted under the provisions contained in the eighth part of this Act, or upon any investigation made by a naval court constituted as hereinafter mentioned, it is reported that the loss or abandonment of, or serious damage to, any ship, or loss of life, has been caused by his wrongful act or default.

(3.) If he is superseded by the order of any Admiralty court or of any naval court constituted as hereinafter mentioned.

(4.) If he is shown to have been convicted of any offence.

(5.) If, upon any investigation made by any court or tribunal authorised or hereafter to be authorised by the legislative authority in any *British* possession to make inquiry into charges of incompetency or misconduct on the part of masters or mates of ships, or as to shipwrecks or other casualties affecting ships, a report is made by such court or tribunal to the effect that he has been guilty of any gross act of misconduct, drunkenness, or tyranny, or that the loss or abandonment of, or serious damage to, any ship, or loss of life, has been caused by his wrongful act or default, and such report is confirmed by the governor or person administering the government of such possession.

And every master or mate whose certificate is cancelled or suspended shall deliver it to the Board of Trade or as it directs, and in default shall for each offence incur a penalty not exceeding fifty pounds; and the Board of Trade may at any subsequent time grant to any person whose certificate has been cancelled a new certificate of the same or of any lower grade. (See sections 23 and 24 of 25 and 26 Vict., cap. 63, *post.*)

Offences of Seamen and Apprentices, and their Punishments.

243. Whenever any seaman who has been lawfully engaged, or any apprentice to the sea-service, commits any of the following offences he shall be liable to be punished summarily as follows; (that is to say),

Desertion.

(1.) For desertion he shall be liable to imprisonment for any period not exceeding twelve weeks, with or without hard labour, and also to forfeit all or any part of the clothes and effects he leaves on board, and all or any part of the wages or emoluments which he has then earned, and also, if such desertion takes place abroad, at the discretion of the court, to forfeit all or any part of the wages or emoluments he may earn in any other ship in which he may be employed until his next return to the United Kingdom, and to satisfy any excess of wages paid by the master or owner of the ship from which he deserts to any substitute engaged in his place at a higher rate of wages than the rate stipulated to be paid to him.

Neglecting or refusing to Join, or to proceed to Sea, Absence within Twenty-four Hours before Sailing and Absence without Leave.

(2.) For neglecting or refusing, without reasonable cause, to join his ship, or to proceed to sea in his ship, or for absence without leave at any time within twenty-four hours of the ship's sailing from any port, either at the commencement or during the progress of any voyage, or for absence at any time without leave and without sufficient reason from his ship or from his duty, not amounting to desertion or not treated as such by the master, he shall be liable to imprisonment for any period not exceeding ten weeks, with or without hard labour, and also, at the discretion of the court, to forfeit out of his wages a sum not exceeding the amount of two days' pay, and in addition for every twenty-four hours of absence, either a sum not exceeding six days' pay, or any expenses which have been properly incurred in hiring a substitute.

Quitting without Leave before Ship is secured.

(3.) For quitting the ship without leave after her arrival at her port of delivery, and before she is placed in security, he shall be liable to forfeit out of his wages a sum not exceeding one month's pay.

Act of Disobedience.

(4.) For wilful disobedience to any lawful command he shall be liable to imprisonment for any period not exceeding four weeks, with or without hard labour, and also, at the discretion of the court, to forfeit out of his wages a sum not exceeding two days' pay.

Continued Disobedience.

(5.) For continued wilful disobedience to lawful commands, or continued wilful neglect of duty, he shall be liable to imprisonment for any period not exceeding twelve weeks, with or without hard labour, and also, at the discretion of the court, to forfeit for every twenty-four hours' continuance of such disobedience or neglect either a sum not exceeding six days' pay, or any expenses which have been properly incurred in hiring a substitute.

Assault on Officers.

(6.) For assaulting any master or mate he shall be liable to imprisonment for any period not exceeding twelve weeks, with or without hard labour.

Combining to Disobey.

(7.) For combining with any other or others of the crew to disobey lawful commands, or to neglect duty, or to impede the navigation of the ship or the progress of the voyage, he shall be liable to imprisonment for any period not exceeding twelve weeks, with or without hard labour.

BENGAL SECRETARIAT

Wilful Damage and Embezzlement.

(8.) For wilfully damaging the ship, or embezzling or wilfully damaging any of her stores or cargo, he shall be liable to forfeit out of his wages a sum equal in amount to the loss thereby sustained, and also, at the discretion of the court, to imprisonment for any period not exceeding twelve weeks, with or without hard labour.

Act of Smuggling causing Loss to Owner.

(9.) For any act of smuggling of which he is convicted, and whereby loss or damage is occasioned to the master or owner, he shall be liable to pay to such master or owner such a sum as is sufficient to reimburse the master or owner for such loss or damage; and the whole or a proportionate part of his wages may be retained in satisfaction or on account of such liability, without prejudice to any further remedy. (As to the survey of ships alleged by seamen to be unseaworthy, see Merchant Shipping Act, 1873 sections 7, 8, and 9, *post.*)

Entry of Offences to be made in Official Log, and to be Read over or a Copy given to the Offender, and his Reply, if any, to be also entered.

244. Upon the commission of any of the offences enumerated in the last preceding section, an entry thereof shall be made in the official log-book, and shall be signed by the master, and also by the mate or one of the crew; and the offender, if still in the ship, shall before the next subsequent arrival of the ship at any port, or if she is at the time in port, before her departure therefrom, either be furnished with a copy of such entry or have the same read over distinctly and audibly to him, and may thereupon make such reply thereto as he thinks fit; and a statement that a copy of the said entry has been so furnished, or that the same has been so read over as aforesaid, and the reply (if any) made by the offender, shall likewise be entered and signed in manner aforesaid; and in any subsequent legal proceeding the entries hereinbefore required shall, if practicable, be produced or proved, and in default of such production or proof the court hearing the case may, at its discretion, refuse to receive evidence of the offence.

Seamen whom Masters of Ships are compelled to convey, and Persons going in Ships without Leave, to be subject to Penalties for Breach of Discipline.

245. Every seafaring person whom the master of any ship is, under the authority of this Act or of any other Act of Parliament, compelled to take on board and convey, and every person who goes to sea in any ship without the consent of the master or owner, or other person entitled to give such consent, shall, so long as he remains in such ship, be subject to the same laws and regulations for preserving discipline, and to the same penalties and punishments for offences constituting or tending to a breach of discipline, to which he would be subject if he were a member of the crew and had signed the agreement.

Master or Owner may Apprehend Deserters without Warrant.

246. Whenever, either at the commencement or during the progress of any voyage, any seaman or apprentice neglects or refuses to join, or deserts from, or refuses to proceed to sea in, any ship in which he is duly engaged to serve, or is found otherwise absenting himself therefrom without leave, the master or any mate, or the owner, ship's husband, or consignee, may, in any place in Her Majesty's dominions, with or without the assistance of the local police officers or constables, who are hereby directed to give the same, if required, and also at any place out of Her Majesty's dominions, if and so far as the laws in force at such place will permit, apprehend him without first procuring a warrant; and may thereupon in any case, and shall in case he so requires, and it is practicable, convey him before some court capable of taking cognisance of the matter, to be dealt with according to law; and may, for the purpose of conveying him before such court, detain him in custody for a period not exceeding twenty-four hours, or such shorter time as may be necessary, or may, if he does not so require, or if there is no such court at or near the place, at once convey him on board; and if any such apprehension appears to the court before which the case is brought to have been made on improper or on insufficient grounds, the master, mate, owner, ship's husband, or consignee who makes the same or causes the same to be made shall incur a penalty not exceeding twenty pounds; but such penalty, if inflicted, shall be a bar to any action for false imprisonment in respect of such apprehension.

Deserters may be sent on Board in lieu of being Imprisoned.

247. Whenever any seaman or apprentice is brought before any court on the ground of his having neglected or refused to join or to proceed to sea in any ship in which he is engaged to serve, or of having deserted or otherwise absented himself therefrom without leave, such court may, if the master or the owner or his agent so requires, instead of committing the offender to prison, cause him to be conveyed on board for the purpose of proceeding on the voyage, or deliver him to the master or any mate of the ship, or the owner or his agent, to be by them so conveyed, and may in such case order any costs and expenses properly incurred by or on behalf of the master or owner by reason of the offence to be paid by the offender, and, if necessary, to be deducted from any wages which he has then earned, or which by virtue of his then existing engagement he may afterwards earn.

Seamen Imprisoned for Desertion or Breach of Discipline may be sent on Board before Termination of Sentence.

248. If any seaman or apprentice is imprisoned on the ground of his having neglected or refused to join or to proceed to sea in any ship in which he is engaged to serve, or of having deserted or otherwise absented himself therefrom without leave, or of his having committed any other breach of discipline, and if during such imprisonment and before his engagement is at an end his services are required on board his ship, any justice may, at the request of the master or of the owner or his agent, cause such seaman or apprentice to be conveyed on board his said ship for the purpose of proceeding on the voyage, or to be delivered to the master or any mate of the

ship or to the owner or his agent, to be by them so conveyed, notwithstanding that the termination of the period for which he was sentenced to imprisonment has not arrived.

Entries and Certificates of Desertion Abroad to be copied, sent Home, and admitted in Evidence.

249. In all cases of desertion from any ship in any place abroad, the master shall produce the entry of such desertion in the official log-book to the person or persons hereby required to endorse on the agreement a certificate of such desertion; and such person or persons shall thereupon make and certify a copy of such entry, and also a copy of the said certificate of desertion; and if such person is a public functionary, he shall, and in other cases the said master shall, forthwith transmit such copies to the Registrar-General of Seamen in *England*; and the said registrar shall, if required, cause the same to be produced in any legal proceedings; and such copies, if purporting to be so made and certified as aforesaid, and certified to have come from the custody of the said registrar, shall in any legal proceeding relating to such desertion be received as evidence of the entries therein appearing.

Facilities for proving Desertion, so far as concerns Forfeiture of Wages.

250. Whenever a question arises whether the wages of any seaman or apprentice are forfeited for desertion, it shall be sufficient for the party insisting on the forfeiture to show that such seaman or apprentice was duly engaged in or that he belonged to the ship from which he is alleged to have deserted, and that he quitted such ship before the completion of the voyage or engagement, or if such voyage was to terminate in the United Kingdom and the ship has not returned, that he is absent from her, and that an entry of the desertion has been duly made in the official log-book; and thereupon the desertion shall, so far as relates to any forfeiture of wages or emoluments under the provisions hereinbefore contained, be deemed to be proved, unless the seaman or apprentice can produce a proper certificate of discharge, or can otherwise show to the satisfaction of the court that he had sufficient reasons for leaving his ship.

Costs of procuring Imprisonment may to the Extent of Three Pounds be Deducted from Wages.

251. Whenever in any proceeding relating to seamen's wages it is shown that any seaman or apprentice has in the course of the voyage been convicted of any offence by any competent tribunal, and rightfully punished therefor by imprisonment or otherwise, the court hearing the case may direct a part of the wages due to such seaman, not exceeding three pounds, to be applied in reimbursing any costs properly incurred by the master in procuring such conviction and punishment.

Amount of Forfeiture, how to be ascertained when Seamen contract for the Voyage.

252. Whenever any seaman contracts for wages by the voyage or by the run or by the share, and not by the month or other stated period of time,

the amount of forfeiture to be incurred under this Act shall be taken to be an amount bearing the same proportion to the whole wages or share as a calendar month or other the period hereinbefore mentioned in fixing the amount of such forfeiture (as the case may be) bears to the whole time spent in the voyage; and if the whole time spent in the voyage does not exceed the period for which the pay is to be forfeited, the forfeiture shall extend to the whole wages or share.

Application of Forfeitures.

253. All clothes, effects, wages, and emoluments which under the provisions hereinbefore contained are forfeited for desertion shall be applied, in the first instance, in or towards the reimbursement of the expenses occasioned by such desertion to the master or owner of the ship from which the desertion has taken place; and may, if earned subsequently to the desertion, be recovered by such master, or by the owner or his agent, in the same manner as the deserter might have recovered the same if they had not been forfeited; and in any legal proceeding relating to such wages, the court may order the same to be paid accordingly; and subject to such reimbursement, the same shall be paid into the receipt of Her Majesty's Exchequer in such manner as the Treasury may direct, and shall be carried to and form part of the Consolidated Fund of the United Kingdom; and in all other cases of forfeiture of wages under the provisions hereinbefore contained, the forfeiture shall, in the absence of any specific directions to the contrary, be for the benefit of the master or owner by whom the wages are payable.

Questions of Forfeitures may be decided in Suits for Wages.

254. Any question concerning the forfeiture of or deductions from the wages of any seaman or apprentice may be determined in any proceeding lawfully instituted with respect to such wages, notwithstanding that the offence in respect of which such question arises, though hereby made punishable by imprisonment as well as forfeiture, has not been made the subject of any crimnal proceeding.

Penalty for False Statement as to last Ship or Name.

255. If any seaman, on or before being engaged, wilfully and fraudulently makes a false statement of the name of his last ship or last alleged ship, or wilfully and fraudulently makes a false statement of his own name, he shall incur a penalty not exceeding five pounds; and such penalty may be deducted from any wages he may earn by virtue of such engagement as aforesaid, and shall, subject to reimbursement of the loss and expenses (if any) occasioned by any previous desertion, be paid and applied in the same manner as other penalties payable under this Act.

Fines to be deducted from Wages and paid to Shipping-Master.

256. Whenever any seaman commits an act of misconduct for which his agreement imposes a fine, and which it is intended to punish by enforcing such fine, an entry thereof shall be made in the official log-book, and a copy

of such entry shall be furnished or the same shall be read over to the offender, and an entry of such reading over, and of the reply (if any) made by the offender, shall be made, in the manner and subject to the conditions hereinbefore specified with respect to the offences against discipline specified in and punishable under this Act; and such fine shall be deducted and paid over as follows; (that is to say), If the offender is discharged in the United Kingdom, and the offence and such entries in respect thereof as aforesaid are proved, in the case of a foreign-going ship to the satisfaction of the shipping-master before whom the offender is discharged, and in the case of a home-trade ship to the satisfaction of the shipping-master at or nearest to the place at which the crew is discharged, the master or owner shall deduct such fine from the wages of the offender, and pay the same over to such shipping-master; and if before the final discharge of the crew in the United Kingdom any such offender as aforesaid enters into any of Her Majesty's ships, or is discharged abroad, and the offence and such entries as aforesaid are proved to the satisfaction of the officer in command of the ship into which he so enters, or of the consular officer, officer of customs, or other person by whose sanction he is so discharged, the fine shall thereupon be deducted as aforesaid, and an entry of such deduction shall then be made in the official log-book (if any), and signed by such officer or other person; and on the return of the ship to the United Kingdom the master or owner shall pay over such fine, in the case of foreign-going ships, to the shipping master before whom the crew is discharged, and in the case of home-trade ships to the shipping-master at or nearest to the place at which the crew is discharged; and if any master or owner neglects or refuses to pay over any such fine in manner aforesaid, he shall for each such offence incur a penalty not exceeding six times the amount of the fine retained by him: Provided that no act of misconduct for which any such fine as aforesaid has been inflicted and paid shall be otherwise punished under the provisions of this Act.

Penalty for Enticing to Desert, and Harbouring Deserters.

257. Every person who by any means whatever persuades or attempts to persuade any seaman or apprentice to neglect or refuse to join or to proceed to sea in or to desert from his ship, or otherwise to absent himself from his duty, shall for each such offence in respect of each such seaman or apprentice incur a penalty not exceeding ten pounds; and every person who wilfully harbours or secretes any seaman or apprentice who has deserted from his ship, or who has wilfully neglected or refused to join or has deserted from his ship, knowing or having reason to believe such seaman or apprentice to have so done, shall for every such seaman or apprentice so harboured or secreted incur a penalty not exceeding twenty pounds.

Penalty for obtaining Passage surreptitiously.

258. Any person who secretes himself and goes to sea in any ship without the consent of either the owner, consignee, or master, or of a mate, or of any person in charge of such ship, or of any other person entitled to give such consent, shall incur a penalty not exceeding twenty pounds, or be liable to imprisonment, with or without hard labour, for any period not exceeding four weeks.

On Change of Masters, Documents hereby required to be handed over to Successor.

259. If during the progress of a voyage the master is superseded or for any other reason quits the ship, and is succeeded in the command by some other person, he shall deliver to his successor the various documents relating to the navigation of the ship and to the crew thereof which are in his custody, and shall in default incur a penalty not exceeding one hundred pounds; and such successor shall immediately on assuming the command of the ship enter in the official log-book a list of the documents so delivered to him.

NAVAL COURTS.

Naval Courts may be summoned for hearing Complaints, and investigating Wrecks on the High Seas or Abroad.

260. Any officer in command of any ship of Her Majesty on any foreign station, or, in the absence of such officer, any consular officer, may summon a court, to be termed a "naval court," in the following cases; (that is to say),

(1.) Whenever a complaint which appears to such officer to require immediate investigation is made to him by the master of any *British* ship, or by any certificated mate, or by one or more of the seamen belonging to any such ship.

(2.) Whenever the interest of the owner of any *British* ship or of the cargo of any such ship appears to such officer to require it.

(3.) Whenever any *British* ship is wrecked or abandoned or otherwise lost at or near the place where such officer may be, or whenever the crew or part of the crew of any *British* ship which has been wrecked, abandoned, or lost abroad, arrives at such place.

Constitution of such Courts.

261. Every such naval court as aforesaid shall consist of not more than five and not less than three members, of whom, if possible, one shall be an officer in the naval service of Her Majesty not below the rank of lieutenant, one a consular officer, and one a master of a *British* merchant ship, and the rest shall be either officers in the naval service of Her Majesty, masters of *British* merchant ships, or *British* merchants; and such court may include the naval or consular officer summoning the same, but shall not include the master or consignee of the ship to which the parties complaining or complained against may belong; and the naval or consular officer in such court, if there is only one such officer in the court, or, if there is more than one, the naval or consular officer who, according to any regulations for settling their respective ranks for the time being in force, is of the highest rank, shall be the president of such court.

General Functions and Mode of Action of such Courts.

262. Every such naval court shall hear and investigate the complaint brought before it, or the cause of the wreck or abandonment (as the case may be), and may for that purpose summon and compel the attendance of parties and witnesses, and administer oaths, and order the production of

documents, and shall conduct the investigation in such manner as to give any person against whom any charge is made an opportunity of making a defence.

Powers of such Courts.

263. Every such naval court may, after hearing the case, exercise the following powers; (that is to say),

To Supersede the Master.

(1.) It may, if unanimous that the safety of the ship or crew, or the interest of the owner, absolutely requires it, supersede the master, and may appoint another person to act in his stead; but no such appointment shall be made without the consent of the consignee of the ship, if then at the place.

To Discharge a Seaman.

(2.) It may discharge any seaman from his ship.

To Forfeit Wages.

(3.) It may order the wages of any seaman so discharged or any part of such wages to be forfeited, and may direct the same either to be retained by way of compensation to the owner, or to be paid into the receipt of Her Majesty's Exchequer in the same manner as other penalties and forfeitures under this Act.

To decide Disputes as to Wages, &c.

(4.) It may decide any questions as to the wages, or fines, or forfeitures, arising between any of the parties to the proceedings.

To direct Costs of Imprisonment to be paid out of Wages.

(5.) It may direct that all or any of the costs incurred by the master or owner of any ship in procuring the imprisonment of any seaman or apprentice in a foreign port, or in his maintenance while so imprisoned, shall be paid out of and deducted from the wages of such seaman or apprentice, whether then or subsequently earned.

To send Home Offenders for Trial.

(6.) It may exercise the same powers with regard to persons charged before it with the commission of offences at sea or abroad as are by this Act given to *British* consular officers.

To order Payment of Costs, &c.

(7.) It may order the costs of the proceedings before it (if any), or any portion thereof, to be paid by any of the parties thereto, and may order any person making a frivolous or vexatious complaint to pay compensation for any loss or delay caused thereby; and any cost or compensation so ordered shall be paid by such person accord-

ingly, and may be recovered in the same manner in which the wages of seamen are recoverable, or may, if the case admits, be deducted from his wages.

And all orders duly made by any such court under the powers hereby given to it shall in any subsequent legal proceedings be deemed conclusive as to the rights of the parties.

Orders to be entered in Official Log.

264. All orders made by any such naval court shall, whenever practicable, be entered in the official log-book of the ship to which the parties to the proceedings before it belong, and shall be signed by the president of the court.

Report to be made of Proceedings of Naval Courts.

265. Every such naval court shall make a report to the Board of Trade, containing the following particulars; (that is to say),

(1.) A statement of the proceedings, with the order made by the court, and a report of the evidence.

(2.) An account of the wages of any seaman or apprentice who is discharged from his ship by such court.

(3.) If summoned in order to inquire into a case of wreck or abandonment, a statement of the opinion of the court as to the cause of such wreck or abandonment, with such remarks on the conduct of the master and crew as the circumstances require.

And every such report shall be signed by the president of the court; and every document purporting to be such a report and to be so signed as aforesaid shall, if produced out of the custody of some officer of the Board of Trade, be deemed to be such report, unless the contrary is proved, and shall be received in evidence, subject to all just exceptions.

Penalty for preventing Complaint or obstructing Investigation.

266. Any person who wilfully and without due cause prevents or obstructs the making of any such complaint as last aforesaid, or the conduct of any case or investigation by any naval court, shall for each such offence incur a penalty not exceeding fifty pounds, or be liable to imprisonment with or without hard labour for any period not exceeding twelve weeks. (See section 18 of 18 and 19 Vict., cap. 91, *post.*)

CRIMES COMMITTED ABROAD.

Offences committed by British Seamen at Foreign Ports to be within Admiralty Jurisdiction.

267. All offences against property or person committed in or at any place either ashore or afloat out of Her Majesty's dominions by any master, seaman, or apprentice, who at the time when the offence is committed is or within three months previously has been employed in any *British* ship, shall be deemed to be offences of the same nature respectively, and be liable to the same punishments respectively, and be inquired of, heard,

tried, determined, and adjudged in the same manner and by the same courts and in the same places as if such offences had been committed within the jurisdiction of the Admiralty of *England;* and the costs and expenses of the prosecution of any such offence may be directed to be paid as in the case of costs and expenses of prosecutions for offences committed within the jurisdiction of the Admiralty of *England.*

Conveyance of Offenders and Witnesses to United Kingdom or some British Possession.

268. The following rules shall be observed with respect to offences committed on the high seas or abroad; (that is to say),

(1.) Whenever any complaint is made to any *British* consular officer of any of the offences mentioned in the last preceding section, or of any offence on the high seas having been committed by any master, seaman, or apprentice belonging to any *British* ship, such consular officer may inquire into the case upon oath, and may, if the case so requires, take any steps in his power for the purpose of placing the offender under necessary restraint and of sending him as soon as practicable in safe custody to the United Kingdom, or to any *British* possession in which there is a court capable of taking cognisance of the offence, in any ship belonging to Her Majesty or to any of her subjects, to be there proceeded against according to law.

(2.) For the purpose aforesaid such consular officer may order the master of any ship belonging to any subject of Her Majesty bound to the United Kingdom or to such *British* possession as aforesaid to receive and afford a passage and subsistence during the voyage to any such offender as aforesaid, and to the witnesses, so that such master be not required to receive more than one offender for every one hundred tons of his ship's registered tonnage, or more than one witness for every fifty tons of such tonnage; and such consular officer shall endorse upon the agreement of the ship such particulars with respect to any offenders or witnesses sent in her as the Board of Trade requires.

(3.) Every such master shall on his ship's arrival in the United Kingdom, or in such *British* possession as aforesaid, give every offender so committed to his charge into the custody of some police officer or constable, who shall take the offender before a justice of the peace or other magistrate by law empowered to deal with the matter, and such justice or magistrate shall deal with the matter as in cases of offences committed upon the high seas.

And any such master as aforesaid who, when required by any *British* consular officer to receive and afford a passage and subsistence to any offender or witness, does not receive him and afford such passage and subsistence to him, or who does not deliver any offender committed to his charge into the custody of some police officer or constable as hereinbefore directed, shall for each such offence incur a penalty not exceeding fifty pounds; and the expense of imprisoning any such offender and of conveying him and the witnesses to the United Kingdom or to such *British* possession as aforesaid, in any manner other than in the ship to which they respectively

belong, shall be part of the costs of the prosecution, or be paid as costs incurred on account of seafaring subjects of Her Majesty left in distress in foreign parts.

Inquiry into Cause of Death on Board.

269. Whenever any case of death happpens on board any foreign-going ship, the shipping-master shall, on the arrival of such ship at the port where the crew is discharged, inquire into the cause of such death, and shall make on the list of the crew delivered to him as herein required an endorsement to the effect either that the statement of the cause of death therein contained is in his opinion true or otherwise, as the result of the inquiry requires; and every such shipping-master shall for the purpose of such inquiry have the powers hereby given to inspectors appointed by the Board of Trade under the first part of this Act; and if in the course of such inquiry it appears to him that any such death as aforesaid has been caused by violence or other improper means, he shall either report the matter to the Board of Trade, or, if the emergency of the case so requires, shall take immediate steps for bringing the offender or offenders to justice.

Depositions to be received in Evidence when Witness cannot be produced.

270. Whenever in the course of any legal proceedings instituted in any part of Her Majesty's dominions before any judge or magistrate, or before any person authorised by law or by consent of parties to receive evidence, the testimony of any witness is required in relation to the subject-matter of such proceeding, then upon due proof, if such proceeding is instituted in the United Kingdom, that such witness cannot be found in that kingdom, or if in any *British* possession, that he cannot be found in the same possession, any deposition that such witness may have previously made on oath in relation to the same subject-matter before any justice or magistrate in Her Majesty's dominions, or any *British* consular officer elsewhere, shall be admissible in evidence subject to the following restrictions; (that is to say),

(1.) If such deposition was made in the United Kingdom, it shall not be admissible in any proceeding instituted in the United Kingdom.

(2.) If such a deposition was made in any *British* possession, it shall not be admissible in any proceeding instituted in the same *British* possession.

(3.) If the proceeding is criminal, it shall not be admissible unless it was made in the presence of the person accused.

Every deposition so made as aforesaid shall be authenticated by the signature of the judge, magistrate, or consular officer before whom the same is made; and such judge, magistrate, or consular officer shall, when the same is taken in a criminal matter, certify, if the fact is so, and[1] that the accused was present at the taking thereof, but it shall not be necessary in any case to prove the signature or official character of the person appearing to have signed any such deposition; and in any criminal proceeding such certificate as aforesaid shall, unless the contrary is proved, be sufficient evidence of the accused having been present in manner thereby certified; but nothing herein contained shall affect any case in which

[1] So printed in the Act: the "and" should evidently be omitted.

depositions taken in any proceeding are rendered admissible in evidence by any Act of Parliament, or by any Act or ordinance of the legislature of any colony, so far as regards such colony, or to interfere with the power of any colonial legislature to make such depositions admissible in evidence, or to interfere with the practice of any court in which depositions not authenticated as hereinbefore mentioned are admissible.

REGISTRATION AND RETURNS RESPECTING SEAMEN.

Establishment of Register Office.

271. There shall be in the Port of *London* an office, to be called the "General Register and Record Office of Seamen," and the Board of Trade shall have control over the same, and may appoint and from time to time remove a Registrar-General, and such assistants, clerks, and servants as may be necessary, and may from time to time, with the consent of the Treasury, regulate their salaries and allowances; and such salaries and allowances and all other necessary expenses shall be paid by the Treasury out of any moneys to be granted by Parliament for that purpose; and the Board of Trade may direct the business of the register office at any of the outports to be transacted at the shipping office, or, with the consent of the Commissioners of Customs, at the custom-house of the port, and may appoint a shipping-master, or, with such consent as aforesaid, some officer of customs, to conduct the same; and such business shall thereupon be conducted accordingly, but shall in all cases be subject to the immediate control of the Board of Trade.

Register of Seamen to be kept.

272. The said Registrar-General of Seamen shall, by means of the agreements, lists, and other papers to be transmitted to him as herein directed, or by such other means as are in his power, keep a register of all persons who serve in ships subject to the provisions of this Act.

Lists to be made for all Ships, containing certain Particulars.

273. Every master of every foreign-going ship of which the crew is discharged in the United Kingdom, in whatever part of Her Majesty's dominions the same is registered, and of every home-trade ship, shall make out and sign a list in a form sanctioned by the Board of Trade, containing the following particulars; (that is to say),

(1.) The number and date of the ship's register and her registered tonnage.

(2.) The length and general nature of the voyage or employment.

(3.) The Christian names, surnames, ages, and places of birth of all the crew, including the master and apprentices; their qualities on board, their last ships or other employments, and the dates and places of their joining the ship.

(4.) The names of any members of the crew who have died or otherwise ceased to belong to the ship, with the times, places, causes, and circumstances thereof.

(5.) The names of any members of the crew who have been maimed or hurt, with the times, places, causes, and circumstances thereof.

(6.) The wages due to any of the crew who have died, at the times of their respective deaths.

(7.) The clothes and other effects belonging to any of the crew who have died, with a statement of the manner in which they have been dealt with, and the money for which any of them have been sold.

(8.) *The name, age, and sex of every person, not being one of the crew, who dies on board, with the date and cause thereof.*[1]

(9.) *Every birth which happens on board, with the date thereof, the sex of the infant, and the names of the parents.*[1]

(10.) Every marriage which takes place on board, with the date thereof, and the names and ages of the parties.

Lists for Foreign-going Ships to be delivered to Shipping-Master on Arrival.

274. In the case of foreign-going ships, the master shall, within forty-eight hours after the ship's arrival at her final port of destination in the United Kingdom, or upon the discharge of the crew, whichever first happens, deliver to the shipping-master before whom the crew is discharged such list as hereinbefore required, and if he fails so to do, shall for every default incur a penalty not exceeding five pounds; and such shipping-master shall thereupon give to the master a certificate of such delivery; and no officer of customs shall clear inwards any foreign-going ship without the production of such certificate, and any such officer may detain any such ship until the same is produced.

Lists to be delivered by Home-Trade Ships Half-yearly.

275. The master or owner of every home-trade ship shall, within twenty-one days after the thirteenth day of *June* and the thirty-first day of *December* in every year, transmit or deliver to some shipping-master in the United Kingdom such list as hereinbefore required for the preceding half-year, and shall in default incur a penalty not exceeding five pounds; and such shipping-master shall give to the master or owner a certificate of such transmission or delivery; and no officer of customs shall grant a clearance or transire for any home-trade ship without the production of such certificate, and any such officer may detain any such ship until the same is produced.

Lists to be sent Home in case of Transfer of Ship and in case of Loss.

276. If any ship ceases, by reason of transfer of ownership or change of employment, to fall within the definition of a foreign-going or of a home-trade ship, the master or owner thereof shall, if such ship is then in the United Kingdom, within one month, and if she is elsewhere, within six months, deliver or transmit to the shipping-master at the port to which the ship has belonged such list as hereinbefore mentioned, duly

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1 These two sub-sections are repealed by 37 and 38 Vict., cap. 88, sec. 54. See now section 37 of that Act.

made out to the time at which she ceased to be a foreign-going or home-trade ship, and in default shall for each offence incur a penalty not exceeding ten pounds; and if any ship is lost or abandoned, the master or owner thereof shall, if practicable, and as soon as possible, deliver or transmit to the shipping-master at the port to which the ship belonged such list as hereinbefore mentioned, duly made out to the time of such loss or abandonment, and in default shall for each offence incur a penalty not exceeding ten pounds.

Shipping-Masters and other Officers to transmit Documents to Registrar. Registrar to permit Inspection, to produce Originals, and give Copies.

277. All shipping-masters and officers of customs shall take charge of all documents which are delivered or transmitted to or retained by them in pursuance of this Act, and shall keep them for such time (if any) as may be necessary for the purpose of settling any business arising at the place where such documents come into their hands, or for any other proper purpose, and shall, if required, produce them for any of such purposes, and shall then transmit them to the Registrar-General of Seamen, to be by him recorded and preserved; and the said registrar shall, on payment of a moderate fee to be fixed by the Board of Trade, or without payment of any fee, if the Board of Trade so directs, allow any person to inspect the same; and in cases in which the production of the original of any such document in any court of justice or elsewhere is essential, shall produce the same, and in other cases shall make and deliver to any person requiring it a certified copy of any such document or of any part thereof; and every copy purporting to be so made and certified shall be received in evidence, and shall have all the effect of the original of which it purports to be a copy.

Officers of Customs to make Returns of Ships to Registrar.

278. The collector or comptroller of customs at every port in the United Kingdom shall, on or before the first day of *February* and the first day of *August* in every year, transmit to the Registrar-General of Seamen a list of all ships registered in such port, and also of all ships whose registers have been transferred or cancelled in such port since the last preceding return.

Agreements, Indentures, and Assignments, on Arrival at a Foreign Port, to be deposited with the Consul, and at a Colony, with the Officers of Customs.

279. The following rules shall be observed with respect to the delivery of documents to *British* consular officers; (that is to say),

(1.) Whenever any ship, in whatever part of Her Majesty's dominions the same is registered (except ships whose business for the time being is to carry passengers), arrives at any foreign port where there is a *British* consular officer, or at any port in any *British* possession abroad, and remains thereat for forty-eight hours, the master shall, within forty-eight hours of the ship's arrival, deliver to such consular officer, or to the chief officer of customs (as the case may be), the agreement with the crew, and also all indentures and assignments of apprenticeships, or, in the case of a ship belong-

ing to a *British* possession, such of the said documents as such ship is provided with.

(2.) Such officer shall keep such documents during the ship's stay in such port, and, in cases where any endorsements upon the agreement are hereby required, shall duly make the same, and shall return the said documents to the master a reasonable time before his departure, with a certificate endorsed on the agreement, stating when the same were respectively delivered and returned.

(3.) If it appears that the required forms have been neglected, or that the existing laws have been transgressed, such officer shall make an endorsement to that effect on the agreement, and forthwith transmit a copy of such endorsement, with the fullest information he can collect regarding such neglect or transgression, to the Registrar-General of Seamen.

And if any master fails to deliver any such document as aforesaid, he shall for every such default incur a penalty not exceeding twenty pounds; and in any prosecution for such penalty, it shall lie upon the master either to produce the certificate of the consular officer or officer of customs hereinbefore required, or to prove that he duly obtained the same, or that it was impracticable for him so to do.

OFFICIAL LOGS.

Official Logs to be kept in Forms sanctioned by Board of Trade.

280. The Board of Trade shall sanction forms of official log-books, which may be different for different classes of ships, so that each such form contains blanks for the entries hereinafter required; and an official log of every ship (except ships employed exclusively in trading between ports on the coasts of the United Kingdom) shall be kept in the appropriate sanctioned form; and such official log may, at the discretion of the master or owner, either be kept distinct from the ordinary ship's log or united therewith, so that in all cases all the blanks in the official log be duly filled up.

Entries to be made in due Time.

281. Every entry in every official log shall be made as soon as possible after the occurrence to which it relates, and if not made on the same day as the occurrence to which it relates, shall be made and dated so as to show the date of the occurrence and of the entry respecting it; and in no case shall any entry therein in respect of any occurrence happening previously to the arrival of the ship at her final port of discharge be made more than twenty-four hours after such arrival.

Entries required in Official Log.

282. Every master of a ship for which an official log-book is hereby required shall make or cause to be made therein entries of the following matters; (that is to say),

Convictions.

(1.) Every legal conviction of any member of his crew, and the punishment inflicted.

Offences.

(2.) Every offence committed by any member of his crew for which it is intended to prosecute, or to enforce a forfeiture, or to exact a fine, together with such statement concerning the reading over such entry, and concerning the reply (if any) made to the charge, as hereinbefore required.

Punishments.

(3.) Every offence for which punishment is inflicted on board, and the punishment inflicted.

Conduct, &c., of Crew.

(4.) A statement of the conduct, character, and qualifications of each of his crew, or a statement that he declines to give an opinion on such particulars.

Illnesses and Injuries.

(5.) Every case of illness or injury happening to any member of the crew, with the nature thereof, and the medical treatment adopted (if any).

Deaths.

(6.) *Every case of death happening on board, and of the cause thereof.*[1]

Births.

(7.) *Every birth happening on board, with the sex of the infant and the names of the parents.*[1]

Marriages.

(8.) Every marriage taking place on board, with the names and ages of the parties.

Quitting Ship.

(9.) The name of every seaman or apprentice who ceases to be a member of the crew, otherwise than by death, with the place, time, manner, and cause thereof.

Wages of Men entering Navy.

(10.) The amount of wages due to any seaman who enters Her Majesty's service during the voyage.

Wages of Deceased Seamen.

(11.) The wages due to any seaman or apprentice who dies during the voyage, and the gross amount of all deductions to be made therefrom.

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[1] These two sub-sections are repealed by 37 and 38 Vict., cap. 88, sec. 54. See now section 37 of that Act.

Sale of Deceased Men's Effects.

(12.) The sale of the effects of any seaman or apprentice who dies during the voyage, including a statement of each article sold, and of the sum received for it.

Collisions.

(13.) Every collision with any other ship, and the circumstances under which the same occurred.

Entries how to be Signed.

283. The entries hereby required to be made in official log-books shall be signed as follows; (that is to say), Every such entry shall be signed by the master and by the mate or some other of the crew, and every entry of illness, injury, or death shall be also signed by the surgeon or medical practitioner on board (if any); and every entry of wages due to or of the sale of the effects of any seaman or apprentice who dies, shall be signed by the master and by the mate and some other member of the crew; and every entry of wages due to any seaman who enters Her Majesty's service shall be signed by the master and by the seaman, or by the officer authorised to receive the seaman into such service.

Penalties in respect of Official Logs.

284. The following offences in respect of official log-books shall be punishable as hereinafter mentioned; (that is to say),

(1.) If in any case an official log-book is not kept in the manner hereby required, or if any entry hereby directed to be made in any such log-book is not made at the time and in the manner hereby directed, the master shall, for each such offence, incur the specific penalty herein mentioned in respect thereof, or where there is no such specific penalty, a penalty not exceeding five pounds.

(2.) Every person who makes or procures to be made or assists in making any entry in any official log-book, in respect of any occurrence happening previously to the arrival of the ship at her final port of discharge more than twenty-four hours after such arrival, shall, for each such offence, incur a penalty not exceeding thirty pounds.

(3.) Every person who wilfully destroys or mutilates or renders illegible any entry in any official log-book, or who wilfully makes or procures to be made, or assists in making any false or fraudulent entry or omission in any such log-book, shall, for each such offence, be deemed guilty of a misdemeanour.

Entries in Official Logs to be received in Evidence.

285. All entries made in any official log-book as hereinbefore directed shall be received in evidence in any proceeding in any court of justice, subject to all just exceptions.

Official Logs to be delivered to Shipping-Master.

286. In the case of foreign-going ships the master shall, within forty-eight hours after the ship's arrival at her final port of destination in the United Kingdom, or upon the discharge of the crew, whichever first happens, deliver to the shipping-master before whom the crew is discharged the official log-book of the voyage; and the master or owner of every home-trade ship, not exclusively employed in trading between ports on the coasts in the United Kingdom, shall, within twenty-one days after the thirtieth day of *June* and the thirty-first day of *December* in every year, transmit or deliver to some shipping-master in the United Kingdom the official log-book for the preceding half year; and every master or owner who refuses or neglects to deliver his official log-book as hereby required, shall be subject to the same consequences and liabilities to which he is hereby made subject for the non-delivery of the list of his crew hereinbefore mentioned.

Official Logs to be sent Home in case of Transfer of Ship and in Case of Loss.

287. If any ship ceases, by reason of transfer of ownership or change of employment, to fall within the definition of a foreign-going or of a home-trade ship, the master or owner thereof shall, if such ship is then in the United Kingdom, within one month, and if she is elsewhere, within six months, deliver or transmit to the shipping-master at the port to which the ship belonged the official log-book (if any), duly made out to the time at which she ceased to be a foreign-going or home-trade ship, and in default shall, for each offence, incur a penalty not exceeding ten pounds; and if any ship is lost or abandoned, the master or owner thereof shall, if practicable, and as soon as possible, deliver or transmit to the shipping-master at the port to which the ship belonged the official log-book (if any), duly made out to the time of such loss or abandonment, and in default shall, for each offence, incur a penalty not exceeding ten pounds.

EAST INDIES AND COLONIES.

Provisions of Act, as applied by East Indian and Colonial Governments to their own Ships, may be enforced throughout the Empire.

288. If the Governor-General of *India* in council, or the respective legislative authorities in any *British* possession abroad, by any acts, ordinances, or other appropriate legal means, apply or adapt any of the provisions in the third part of this Act contained to any *British* ships registered at, trading with, or being at any place within their respective jurisdictions, and to the owners, masters, mates, and crews thereof, such provisions, when so applied and adapted as aforesaid, and as long as they remain in force, shall in respect of the ships and persons to which the same are applied be enforced, and penalties and punishments for the breach thereof shall be recovered and inflicted, throughout Her Majesty's dominions, in the same manner as if such provisions had been hereby so adopted and applied, and such penalties and punishments had been hereby expressly imposed.

East Indian and Colonial Acts to be Subject to Disallowance, and require Sanction as in other Cases.

289. Every Act, ordinance, or other form of law to be passed or promulgated by the Governor-General of *India* in council, or by any other legislative authority, in pursuance of this Act, shall respectively be subject to the same right of disallowance or repeal; and require the same sanction or other acts and formalities, and be subject to the same conditions in all respects, as exist and are required in order to the validity of any other Act, ordinance, or other form of law passed by such Governor-General in council or other legislative authority respectively.

Conflict of Laws.

290. If in any matter relating to any ship or to any person belonging to any ship there appears to be a conflict of laws, then, if there is in the third part of this Act any provision on the subject which is hereby expressly made to extend to such ship, the case shall be governed by such provision, and if there is no such provision, the case shall be governed by the law of the place in which such ship is registered.

PART IV.

SAFETY AND PREVENTION OF ACCIDENTS.

Application of Part IV. of Act.

291. The fourth part of this Act shall apply to all *British* ships; and all foreign steam-ships carrying passengers between places in the United Kingdom shall be subject to all the provisions contained in the fourth part of this Act, and likewise to the same provisions with respect to the certificates of the masters and mates thereof to which *British* steam-ships are subject. (As to foreign ships, see 25 and 26 Vict., cap. 63, secs. 57 and 58, *post.*)

BOATS FOR SEA-GOING SHIPS.

Rules as to Boats and Life-Buoys.

292. The following rules shall be observed with respect to boats and life-buoys; (that is to say),

(1.) No deck ship (except ships used solely as steam-tugs and ships engaged in the whale-fishery) shall proceed to sea from any place in the United Kingdom unless she is provided, according to her tonnage, with boats duly supplied with all requisites for use, and not being fewer in number nor less in their cubic contents than the boats the number and cubic contents of which are specified in the Table marked S. in the Schedule hereto for the class to which such ship belongs.

(2.) No ship carrying more than ten passengers shall proceed to sea from any place in the United Kingdom, unless, in addition to the boats hereinbefore required, she is also provided with a lifeboat furnished with all requisites for use, or unless one of her boats hereinbefore required is rendered buoyant after the manner of a lifeboat.

(3.) No such ship as last aforesaid shall proceed to sea unless she is also provided with two life-buoys.

And such boats and life-buoys shall be kept so as to be at all times fit and ready for use: Provided, that the enactments with respect to boats and life-buoys herein contained shall not apply in any case in which a certificate has been duly obtained under the tenth section of the "Passengers Act, 1852," 15 and 16 Vict., cap. 44, sec. 10.

Penalties on Masters and Owners, &c., neglecting to provide Boats and Life-Buoys.

293. In any of the following cases (that is to say),

(1.) If any ship hereinbefore required to be provided with boats or life-buoys proceeds to sea without being so provided therewith, or if any of such boats or life-buoys are lost or rendered unfit for service in the course of the voyage through the wilful fault or negligence of the owner or master; or,

(2.) If, in case of any of such boats or life-buoys being accidentally lost or injured in the course of the voyage, the master wilfully neglects to replace or repair the same on the first opportunity; or,

(3.) If such boats and life-buoys are not kept so as to be at all times fit and ready for use;

Then, if the owner appears to be in fault he shall incur a penalty not exceeding one hundred pounds, and if the master appears to be in fault, he shall incur a penalty not exceeding fifty pounds.

Officers of Customs not to clear Ships not complying with the above Provisions.

294. No officer of customs shall grant a clearance or transire for any ship hereinbefore required to be provided with boats or with life-buoys unless the same are duly so provided; and if any such ship attempts to go to sea without such clearance or transire, any such officer may detain her until she is so provided. (As to varying requirements as to boats, see 36 and 37 Vict., cap. 85, sec. 15, *post.*)

RULES AS TO LIGHTS MEETING AND PASSING.

295–299. *Repealed.* (For the rules as to lights, signals, meeting and passing, see 25 and 26 Vict., cap. 63, sec. 25, Table C., secs. 26, 27, 28, 30, 31, and 32, and 36 and 37 Vict., cap. 85, secs. 16 and 17, *post.*)

BUILD AND EQUIPMENT OF STEAM-SHIPS.

300. *Repealed.* (See 25 and 26 Vict., cap. 63, *post.*)

Equipment of Steam-Ships

301. Steam-ships shall be provided as follows; (that is to say),

(1.) Every steam-ship of which a survey is hereby required shall be provided with a safety-valve upon each boiler, so constructed as to be out of the control of the engineer when the steam is up, and, if such valve is in addition to the ordinary valve, it shall be so constructed as to have an area not less and a pressure not greater than the area of and pressure on that valve.

Compasses to be adjusted.

(2.) Every sea-going steam-ship employed to carry passengers shall have her compasses properly adjusted from time to time; such adjustment, in the case of ships surveyed as hereinafter mentioned, to be made to the satisfaction of the shipwright surveyor, and according to such regulations as may be issued by the Board of Trade.

Fire Hose.

(3.) Every sea-going steam-ship (unless used solely as a steam-tug) shall be provided with a hose adapted for the purpose of extinguishing fire in any part of the ship, and capable of being connected with the engines of the ship.

Signals.

(4.) *Every sea-going steam-ship employed to carry passengers shall be provided with the following means of making signals of distress; (that is to say), Twelve blue lights or twelve port-fires, and one cannon with ammunition for at least twelve charges, or in the discretion of the master or owner of such ship, with such other means of making signals (if any) as may have previously been approved by the Board of Trade.* (Repealed by 39 and 40 Vict., cap. 80. See sec. 21 of that Act.)

Shelter for Deck-Passengers.

(5.) Every home-trade steam-ship employed to carry passengers by sea shall be provided with such shelter for the protection of deck-passengers (if any) as the Board of Trade, having regard to the nature of the passage, the number of deck-passengers to be carried, the season of the year, the safety of the ship, and the circumstances of the case, may require.

And if any steam-ship as aforesaid plies or goes to sea from any port in the United Kingdom without being so provided as hereinbefore required, then for each default in any of the above requisites the owner shall (if he appears to be in fault) incur a penalty not exceeding one hundred pounds, and the master shall (if he appears to be in fault) incur a penalty not exceeding fifty pounds.

Penalty for improper Weight on Safety-Valve.

302. If any person places an undue weight on the safety-valve of any steam-ship, or, in the case of steam-ships surveyed as hereinafter men-

tioned, increases such weight beyond the limits fixed by such engineer surveyor as hereinafter mentioned, he shall, in addition to any other liabilities he may incur by so doing, incur a penalty not exceeding one hundred pounds.

SURVEY OF PASSENGER STEAMERS.

Definition of Passenger Steamer.

303. For the purpose of the enactments herein contained with respect to surveys and certificates of passenger steam-ships, the word "passengers" shall be held to include any persons carried in a steam-ship, other than the master and crew and the owner, his family and servants; and the expression "passenger steamer" shall be held to include every *British* steam-ship carrying passengers to, from, or between any place or places in the United Kingdom, excepting steam ferryboats working in chains, commonly called steam bridges.

Passenger Steamers to be surveyed.

304. *Every passenger steamer shall be surveyed twice at the least in each year in manner hereinafter mentioned.* (Repealed by 35 and 36 Vict., cap. 73, sec. 8, *post.*)

Board of Trade to appoint Surveyors, and fix their Remuneration.

305. The Board of Trade may from time to time appoint such number of fit and proper persons to be shipwright surveyors and engineer surveyors for the purposes of this Act at such ports or places as it thinks proper, and may also appoint a surveyor-general for the United Kingdom, and may from time to time remove such surveyors or any of them, and may from time to time fix and alter the rates of remuneration to be received by such surveyors. (See also 36 and 37 Vict., cap. 85, sec. 30, *post.*)

Surveyors to have Power to inspect.

306. It shall be lawful for the said surveyors in the execution of their duties to go on board any steam-ship at all reasonable times, and to inspect the same or any part thereof, or any of the machinery, boats, equipments, or articles on board thereof, or any certificates of the master or mate to which the provisions of this Act or any of the regulations to be made by virtue thereof apply, not unnecessarily detaining or delaying the ship from proceeding on any voyage, and if in consequence of any accident to any such ship, or for any other reason they consider it necessary so to do, to require the ship to be taken into dock for the purpose of surveying the hull thereof; and any person who hinders any such surveyor from going on board any such steam-ship, or otherwise impedes him in the execution of his duty under this Act, shall incur a penalty not exceeding five pounds.

Board of Trade to regulate Mode of making Surveys.

307. The said surveyors shall execute their duties under the direction of the Board of Trade, and such board shall make regulations as to the manner in which the surveys hereinafter mentioned shall be made, and as

to the notice to be given to the surveyors when surveys are required, and as to the amount and payment of any travelling or other expenses incurred by such surveyors in the execution of their duties, and may thereby determine the persons by whom and the conditions under which such payment shall be made.

Penalty on Surveyors receiving Fees unlawfully.

308. Every surveyor who demands or receives directly or indirectly from the owner or master of any ship surveyed by him under the provisions of this Act any fee or remuneration whatsoever for or in respect of such survey, otherwise than as the officer and by the direction of the Board of Trade, shall incur a penalty not exceeding fifty pounds. (See also 35 and 36 Vict., cap. 73, sec. 15, *post.*)

Owners to have Surveys made by Shipwright and Engineer Surveyors, and Surveyors to give Declarations.

309. The owner of every passenger steamer shall cause the same to be surveyed at the times hereinafter directed by one of the said shipwright surveyors and by one of the said engineer surveyors so appointed as aforesaid; such shipwright surveyor being, in the case of iron steamers, a person who is in the judgment of the Board of Trade properly qualified to survey such ships; and such surveyors shall thereupon, if satisfied that they can with propriety do so, give to such owner declarations as follows:

The declaration of the shipwright surveyor shall contain statements of the following particulars; (that is to say),

(1.) That the hull of the ship is sufficient for the service intended, and in good condition.

(2.) That the partitions, boats, life-buoys, lights, signals, compasses, and shelter for deck-passengers, and the certificates of the master and mate or mates, are such and in such condition as required by this Act.

(3.) The time (if less than six months) for which the said hull and equipments will be sufficient.

(4.) The limits (if any) beyond which, as regards the hull and equipments, the ship is in the surveyor's judgment not fit to ply.

(5.) The number of passengers which the ship is in the judgment of the surveyor fit to carry, distinguishing, if necessary, between the respective numbers to be carried on the deck and in the cabins, and in different parts of the deck and cabins; such numbers to be subject to such conditions and variations, according to the time of year, the nature of the voyage, the cargo carried, or other circumstances, as the case requires.

And the declaration of the engineer surveyor shall contain statements of the following particulars; (that is to say),

(1.) That the machinery of the ship is sufficient for the service intended, and in good condition.

(2.) The time (if less than six months) for which such machinery will be sufficient.

(3.) That the safety-valves and fire hose are such and in such condition as are required by this Act.

(4.) The limits of the weight to be placed on the safety-valves.
(5.) The limits (if any) beyond which, as regards the machinery, the ship is in the surveyor's judgment not fit to ply.

And such declarations shall be in such form as the Board of Trade directs. (See also 25 and 26 Vict., cap. 63, sec. 12, *post.*)

Transmission of Declarations to Board of Trade. Penalty for Delay.

310. The said owner shall transmit such declarations to the Board of Trade within fourteen days after the dates of the receipt thereof respectively, and in default shall forfeit a sum not exceeding ten shillings for every day that the sending of such declarations is delayed; and such sum shall be paid upon the delivery of the certificate hereinafter mentioned, in addition to the fee payable for the same, and shall be applied in the same manner as such fees.

Times appointed for Surveys and Transmission of Declarations.

311. In all cases where it is possible, the said half-yearly surveys shall be made in the months of *April* and of *October*, and the declarations shall be transmitted on or before the thirtieth day of *April* and the thirty-first day of *October* respectively; but if the owner of any passenger steamer is unable to have the same surveyed in the month of *April* or *October* (as the case may be), either by reason of such ship being absent from the United Kingdom during the whole of those periods respectively, or by reason of such ship or the machinery thereof being under construction or repair, or of such ship being laid up in dock, or for any other reason satisfactory to the Board of Trade, then he shall have the same surveyed as aforesaid as soon thereafter as possible, and shall transmit such declarations to the Board of Trade within fourteen days after the receipt thereof, together with a statement of the reasons which have prevented the survey of such ship at the time hereinbefore prescribed, and shall, in case of delay in transmitting the declarations, be liable to a forfeiture similar to that mentioned in the last preceding section. (See section 34 of 25 and 26 Vict., cap. 63, *post.*)

Board of Trade to issue Certificates.

312. Upon the receipt of such declarations the Board of Trade shall, if satisfied that the provisions of the fourth part of this Act have been complied with, cause a certificate in duplicate to be prepared and issued to the effect that the provisions of the law with respect to the survey of the ship and the transmission of declarations in respect thereof have been complied with; and such certificate shall state the limits (if any) beyond which, according to the declaration of the surveyors, such ship is not fit to ply, and shall also contain a statement of the number of passengers which, according to the declaration of the shipwright surveyor, such ship is fit to carry, distinguishing (if necessary) between the respective numbers to be carried on the deck and in the cabins and in different parts of the deck and cabins, such number to be subject to such conditions and variations, according to the time of year, the nature of the voyage, the cargo carried, and other circumstances, as the case requires.

Issue and Transmission of Certificates.

313. The Board of Trade shall transmit such duplicate certificate to the shipping-master or to some other public officer at such port as the owner may mention for the purpose, or at the port where the owner or his agent resides or where the ship was surveyed and is for the time being lying, and shall cause notice of such transmission to be given by post or otherwise to the master or owner or his agent; and the said shipping-master or officer shall deliver such duplicate certificate to the said owner, master, or agent, on his applying and paying the fees and other sums (if any) herein mentioned as payable in that behalf; and in proving the due issue and transmission to the owner, agent, or master of such certificate, it shall be sufficient to show that the same has been duly received by such shipping-master or public officer aforesaid, and that due notice of the transmission thereof to such shipping-master or officer has been given to such owner, master, or agent.

Fees to be paid for Certificates.

314. The owner of every passenger steamer requiring a certificate under the fourth part of this Act shall pay for every certificate granted by the Board of Trade such fees as such Board directs, not exceeding the fees mentioned in the Table marked T. in the Schedule hereto.

How long Certificates to continue in force.

315. No certificate shall be held to be in force for the purposes of the fourth part of this Act beyond the date fixed by the Board of Trade for the expiration thereof; and no certificate shall be in force after notice is given by the Board of Trade to the owner, agent, or master of the ship to which the same relates that such Board has cancelled or revoked the same: Provided, that if any passenger steamer is absent from the United Kingdom at the time when her certificate expires, no penalty shall be incurred for the want of a certificate until she first begins to ply with passengers after her next subsequent return to the United Kingdom; and the Board of Trade may require any certificate which has expired, or has been revoked or cancelled, to be delivered up as it directs; and any owner or master who, without reasonable cause, neglects or refuses to comply with such requirement, shall incur a penalty not exceeding ten pounds.

Board of Trade may cancel Certificates, and require fresh Declarations.

316. The Board of Trade may revoke and cancel such certificates in any case in which it has reason to believe—

(1.) That the declarations of the sufficiency and good condition of the hull, equipments, and machinery of any passenger steamer, or either of them, have been fraudulently or erroneously made; or,

(2.) That such certificate has otherwise been issued upon false or erroneous information; or,

(3.) That since the making of such declarations the hull, equipments, or machinery of such ship have sustained any injury, or are otherwise insufficient.

And in every such case the Board of Trade may, if it thinks fit, require the owner to have the hull, equipments, or machinery of such ship again surveyed, and to transmit a further declaration or declarations of the sufficiency and good condition thereof, before re-issuing any certificate or granting a fresh one in lieu thereof.

Copy of Certificate to be placed in conspicuous Part of Ship.

317. The owner or master of every passenger steamer shall forthwith on the transmission of any such certificate as aforesaid to him or his agent cause one of the duplicates thereof so transmitted to be put up in some conspicuous part of the ship, so as to be visible to all persons on board the same, and shall cause it to be continued so put up so long as such certificate remains in force and such ship is in use; and in default such owner or master shall for every offence incur a penalty not exceeding ten pounds.

Ship not to proceed on her Voyage without Certificate.

318. It shall not be lawful for any passenger steamer to proceed to sea or upon any voyage or excursion with any passengers on board, *unless the owner thereof has transmitted to the Board of Trade the declarations hereinbefore required, nor* unless the owner or master thereof has received from such Board such a certificate as hereinbefore provided for such certificate, being a certificate applicable to the voyage or excursion on which such ship is about to proceed; and no officer of customs shall grant any clearance or transire for any passenger steamer unless upon the production of such certificate as aforesaid (being a certificate then in force and applicable as aforesaid); and if any passenger steamer attempts to ply or go to sea without such production, any such officer may detain her until such certificate is produced; and if any passenger steamer plies or goes to sea with any passengers on board, without having one of the duplicates of such certificate as aforesaid (being a certificate then in force, and applicable as aforesaid), so put up as aforesaid in some conspicuous part of the ship, the owner thereof shall for such offence incur a penalty not exceeding one hundred pounds, and the master of such ship shall also incur a further penalty not exceeding twenty pounds. (The words in italics are repealed by 39 and 40 Vict., cap. 80.)

Penalty for carrying Passengers in Excess of Numbers specified in Certificate.

319. If the owner or master or other person in charge of any passenger steamer receives on board thereof, or on or in any part thereof, or if such ship has on board thereof, or on or in any part thereof, any number of passengers which, having regard to the time, occasion, and circumstances of the case, is greater than the number of passengers allowed by the certificate, the owner or master shall incur a penalty not exceeding twenty pounds, and also an additional penalty not exceeding five shillings for every passenger over and above the number allowed by the certificate, or, if the fare of any of the passengers on board exceeds five shillings, not exceeding double the amount of the fares of all the passengers who are over and above

the number so allowed as aforesaid, such fares to be estimated at the highest rate of fare payable by any passenger on board.

Forgery of Declaration or Certificate a Misdemeanour.

320. Every person who knowingly and wilfully makes, or assists in making or procures to be made, a false or fraudulent declaration or certificate with respect to any passenger steamer requiring a certificate under the fourth part of this Act, or who forges, assists in forging, or procures to be forged, fraudulently alters, assists in fraudulently altering, or procures to be fraudulently altered, any declaration or certificate required by the fourth part of this Act, or any words or figures in any such declaration or certificate, or any signature thereto, shall be deemed guilty of a misdemeanour.

Surveyors to make Returns of the Build and other Particulars of Steam-ships, and Owners and Masters to give Information for that Purpose.

321. The said surveyors shall from time to time make such returns to the Board of Trade as it requires with respect to the build, dimensions, draught, burden, rate of sailing, room for fuel, and the nature and particulars of machinery and equipments of the ships surveyed by them; and every owner, master, and engineer of any such ship shall, on demand, give to such surveyors all such information and assistance within his power as they require for the purpose of such returns; and every such owner, master, or engineer who, on being applied to for that purpose, wilfully refuses or neglects to give such information or assistance, shall be liable to a penalty not exceeding five pounds.

MISCONDUCT BY PASSENGERS IN STEAMERS.

Penalty on Persons refusing to give their Name and Address.

322, 323. *Repealed.* (See sections 35, 36, and 37 of 25 and 26 Vict., cap. 63, *post.*)

324. Every person who, having committed any of the offences mentioned in the two last preceding sections or either of them, refuses on application of the master of the ship or of any other person in the employ of the owner thereof to give his name and address, or who on such application gives a false name or address, shall incur a penalty not exceeding twenty pounds, to be paid to the said owner.

Power to refuse or remove Passengers who are Drunk or misconduct themselves.

325. The master of any home-trade passenger steam-ship may refuse to receive on board thereof any person who, by reason of drunkenness or otherwise, is in such a state, or misconducts himself in such a manner, as to cause annoyance to other passengers on board, or if such person is on board, may put him on shore at any convenient place; and no person so refused admittance or put on shore shall be entitled to the return of any fare he may have paid.

ACCIDENTS.

Accidents to Steam-ships to be reported to Board of Trade.

326. Whenever any steam-ship has sustained or caused any accident occasioning loss of life or any serious injury to any person, or has received any material damage affecting her seaworthiness or her efficiency either in her hull or in any part of her machinery, the owner or master shall, within twenty-four hours after the happening of such accident or damage, or as soon thereafter as possible, send to the Board of Trade, by letter signed by such owner or master, a report of such accident or damage, and of the probable occasion thereof, stating the name of the ship, the port to which she belongs, and the place where she is; and if such owner or master neglect so to do he, shall for such offence incur a penalty not exceeding fifty pounds.

Notice to be given of apprehended Loss of Steam-ships.

327. *If the owner of any steamship have reason, owing to the non-appearance of such ship, or to any other circumstance, to apprehend that such ship has been wholly lost, he shall as soon as conveniently may be send notice thereof in like manner to the Board of Trade, and if he neglect so to do within a reasonable time, he shall for such offence incur a penalty not exceeding fifty pounds.* (Repealed by 36 and 37 Vict., cap. 85, sec. 33. See now section 22 of that Act, *post.*)

Collisions to be entered in Official Log.

328. In every case of collision in which it is practicable so to do, the master shall immediately after the occurrence cause a statement thereof and of the circumstances under which the same occurred, to be entered in the official log-book (if any), such entry to be signed by the master, and also by the mate or one of the crew, and in default shall incur a penalty not exceeding twenty pounds.

CARRYING DANGEROUS GOODS.

Provisions to prevent the taking Dangerous Goods on board without due Notice.

329. *No person shall be entitled to carry in any ship, or to require the master or owner of any ship to carry therein, any aquafortis, oil of vitriol, gunpowder, or any other goods which, in the judgment of such master or owner, are of a dangerous nature; and if any person carries or sends by any ship any goods of a dangerous nature without distinctly marking their nature on the outside of the package containing the same, or otherwise giving notice in writing to the master or owner at or before the time of carrying or sending the same to be shipped, he shall for every such offence incur a penalty not exceeding one hundred pounds; and the master or owner of any ship may refuse to take on board any parcel that he suspects to contain goods of a dangerous nature, and may require them to be opened to ascertain the fact.* (Repealed by 36 and 37 Vict., cap. 85, sec. 33. See now sections 23 to 28 of that Act, *post.*)

PART V.

PILOTAGE.

Application of Part V. of Act.

330. The fifth part of this Act shall apply to the United Kingdom only.

POWERS OF PILOTAGE AUTHORITIES (GENERAL).

General Jurisdiction of Pilotage Authorities.

331. Every pilotage authority shall retain all powers and jurisdiction which it now lawfully possesses, so far as the same are consistent with the provisions of this Act; but no law relating to such authority, or to the pilots licensed by it, and no act done by such authority, shall, if inconsistent with any provision of this Act, be of any force whatever.

Power of Pilotage Authorities to make and extend Exemptions from Compulsory Pilotage.

332. Every pilotage authority shall have power, by bye-law made with the consent of Her Majesty in council, to exempt the masters of any ships, or of any classes of ships, from being compelled to employ qualified pilots, and to annex any terms or conditions to such exemptions, and to revise and extend any exemptions now existing by virtue of this Act or any other Act of Parliament, law, or charter, or by usage, upon such terms and conditions and in such manner as may appear desirable to such authority.

Powers of Pilotage Authorities.

333. Subject to the provisions contained in the fifth part of this Act, it shall be lawful for every pilotage authority, by bye-law made with the consent of Her Majesty in council, from time to time to do all or any of the following things within its districts; (that is to say),

To determine Qualifications of Pilots.

(1.) To determine the qualifications to be required from persons applying to be licensed as pilots, whether in respect of their age, skill, time of service, character, or otherwise.

To make Regulations as to Pilot Boats.

(2.) To make regulations as to the approval and licensing of pilot boats and ships, with power to establish and regulate companies for the support of such boats and ships, and for a participation in the profits made thereby; the companies so established to be exempt from the provisions of the Act passed in the session holden in the

seventh and eighth years of the reign of Her present Majesty, chapter one hundred and ten, intituled, *An Act for the Registration, Incorporation, and Regulation of Joint-Stock Companies.*

To make Regulations for the Government of Pilots.

(3.) To make regulations for the government of the pilots licensed by them, and for insuring their good conduct, and their constant attendance to and effectual performance of their duty, either at sea or on shore.

To make Regulations as to Licences and Certificates.

(4.) To fix the terms and conditions of granting licences to pilots and apprentices, and of granting such pilotage certificates as hereinafter mentioned to masters and mates, and to make regulations for punishing any breach of such regulations as aforesaid committed by such pilots or apprentices or by such masters and mates, by the withdrawal or suspension of their licences or certificates, as the case may be, or by the infliction of penalties to be recoverable summarily before two justices, so that no such penalty be made to exceed the sum of twenty pounds, and so that every such penalty be capable of reduction at the discretion of the justices by whom the same is inflicted.

To alter and reduce Rates of Pilotage.

(5.) To fix the rates and prices or other remuneration to be demanded and received for the time being by pilots licensed by such authority, or to alter the mode of remunerating such pilots, in such manner as such authority may, with such consent as aforesaid, think fit, so that no higher rates or prices be demanded or received from the masters or owners of ships in the case of the *Trinity House* than the rates and prices specified in the Table marked U. in the Schedule hereto; and in the case of all other pilotage authorities, than the rates and prices which might have been lawfully fixed or demanded by such pilotage authorities respectively under any Act of Parliament, charter, or custom in force immediately before the commencement of this Act.

To arrange the Limits of Pilotage Districts.

(6.) To make such arrangements with any other pilotage authority for altering the limits of their respective districts, and for extending the powers of such other authority, or the privileges of the pilots licensed by such other authority, or any of them, to all or any part of its own district, or for limiting its own powers or the privileges of its own pilots, or any of them, or for sharing the said last-mentioned powers and privileges with the said other authority and the pilots licensed by it, or for delegating or surrendering such powers and privileges, or any of them, to any other pilotage

authority, either already constituted or to be constituted by agreement between such authorities, and to the pilots licensed by it, as may appear to such pilotage authorities to be desirable for the purpose of facilitating navigation or of reducing charges on shipping.

To establish Funds for Superannuated Pilots.

(7.) To establish, either alone or in conjunction with any other pilotage authority or authorities, funds for the relief of superannuated or infirm qualified pilots, or of their wives, widows, or children, or to make any new regulations with respect to any funds already applicable to the above purposes or any of them, with power to determine the amount, manner, time, and persons (such persons to be in the service of such pilotage authority) to and in which and by and upon whom the contributions in support of such existing or future funds may be made or levied; and further, to declare the persons or class of persons (such persons or class of persons being confined to men in the service of such pilotage authority, their wives, widows, or children) entitled to participate in the benefits of such existing or future funds, and the terms and conditions upon which they are to be so entitled.

To alter Bye-Laws.

(8.) To repeal or alter any bye-law made in exercise of the above powers, and to make a new bye-law or new bye-laws in lieu thereof.

And every bye-law duly made by any pilotage authority in exercise of the powers hereby given to it shall be valid and effectual, notwithstanding any Act of Parliament, rule, law, or custom to the contrary. (See also 25 and 26 Vict., cap. 63, secs. 39 and 40, *post.*)

Publication of Bye-Laws.

334. Every bye-law proposed to be enacted by any pilotage authority in pursuance of the foregoing powers shall, before it is submitted to Her Majesty in council for her assent, be published in such manner as may from time to time be prescribed by the Board of Trade.

Bye-Laws to be laid before Parliament.

335. Every order in council made in pursuance of the provisions hereinbefore contained shall be laid before both Houses of Parliament as soon as possible after the making thereof.

Power of Appeal to Board of Trade.

336. If the greater part in number of the qualified pilots belonging to any port, or the Local Marine Board where there is one, or at any port where there is no Local Marine Board, if any masters, owners, or insurers of ships, being not less than six in number, consider themselves aggrieved

by any regulation or bye-law in force when this Act comes into operation, or hereafter made under some authority other than the provisions of this Act, or by any defect or omission therein, they may appeal to the Board of Trade, and the said Board may thereupon revoke or alter any such regulation or bye-law, or may make additions thereto in such manner as, having regard to the interests of the persons concerned, may appear to be just and expedient; and every order so made shall be conclusive in the matter.

RETURNS BY PILOTAGE AUTHORITIES (GENERAL).

Pilotage Authorities to make full Returns to the Board of Trade of certain Particulars connected with Pilotage.

337. Every pilotage authority shall deliver periodically to the Board of Trade, in such form and at such times as such Board requires, returns of the following particulars with regard to pilotage within the port or district under the jurisdiction of such authority; (that is to say),

(1.) All bye-laws, regulations, orders, or ordinances relating to pilots or pilotage for the time being in force.

(2.) The names and ages of all pilots or apprentices licensed or authorised to act by such authority, and of all pilots or apprentices acting either mediately or immediately under such authority, whether so licensed or authorised or not.

(3.) The service for which each pilot or apprentice is licensed.

(4.) The rates of pilotage for the time being in force, including therein the rates and descriptions of all charges upon shipping made for or in respect of pilots or pilotage.

(5.) The total amount received for pilotage, distinguishing the several amounts received from *British* ships and from foreign ships respectively, and the several amounts received in respect of different classes of ships paying different rates of pilotage, according to the scale of such rates for the time being in force, and the several amounts received for the several classes of service rendered by pilots; and also the amount paid by such ships (if any) as have before reaching the outer limits of pilotage water if outward-bound, or their port of destination if inward-bound, to take or pay for two or more pilots, whether licensed by the same or by different pilotage authorities; together with the numbers of the ships of each of the several classes paying such several amounts as aforesaid.

(6.) The receipt and expenditure of all moneys received by or on behalf of such authority, or by or on behalf of any sub-commissioners appointed by them, in respect of pilots or pilotage.

And shall allow the Board of Trade, or any persons appointed by such Board for the purpose, to inspect any books or documents in its possession relating to the several matters hereinbefore required to be returned to the Board of Trade.

If Local Authorities fail to give the required Returns, their Jurisdiction may be transferred to the Trinity House.

338. If any of such pilotage authorities as aforesaid (other than the *Trinity House*, or sub-commissioners of pilotage appointed by it, as herein-

after mentioned) fail to deliver to the Board of Trade the periodical returns hereinbefore required within one year of such time as may be fixed by such Board for the purpose, or if any of such authorities do not allow the said Board, or any persons who may be appointed by it for the purpose, to inspect any books or documents in their possession relating to the matters hereinbefore required to be returned by them, it shall be lawful for Her Majesty, by and with the advice of her Privy Council, to direct that all the rights and powers of such authorities in respect of pilotage shall cease or be suspended during such time as Her Majesty directs; and thereupon the *Trinity House* shall thereafter, or during such time as such suspension may continue, have and exercise the same powers of appointing sub-commissioners of pilotage and of licensing pilots, and of establishing and altering rates of pilotage, within the district within which the authority so making default has previously appointed or licensed pilots, as it is by this Act authorised to exercise in any district for which no particular provision is made by any Act of Parliament or charter for the appointment of pilots, and shall also during such time as aforesaid have and exercise the same rights, title, and powers to and in respect of any pilotage funds or other pilotage property which the said pilotage authorities would or might have had or exercised if not so suspended as aforesaid.

Returns to be laid before Parliament.

339. The Board of Trade shall without delay cause the several returns hereinbefore required to be made to such Board to be laid before both Houses of Parliament.

LICENSING OF MASTERS AND MATES (GENERAL).

Master or Mate, if examined and passed, to receive a Pilotage Certificate enabling him to Pilot particular Ships.

340. The master or mate of any ship may, upon giving due notice, and consenting to pay the usual expenses, apply to any pilotage authority to be examined as to his capacity to pilot the ship of which he is master or mate, or any one or more ships belonging to the same owner, within any part of the district over which such pilotage authority has jurisdiction; and such master or mate shall, if such authority thinks fit, thereupon be examined; and if found competent, a pilotage certificate shall be granted to him, containing his name, a specification of the ship or ships in respect of which he has been examined, and a description of the limits within which he is to pilot the same, such limits to be within such jurisdiction as aforesaid; and such certificate shall enable the person therein named to pilot the ship or any of the ships therein specified, of which he is acting as master or mate at the time, but no other, within the limits therein described, without incurring any penalties for the non-employment of a qualified pilot.

Renewal of Pilotage Certificate.

341. The pilotage certificate so granted shall not be in force for more than one year, unless the same is renewed, which may from time to time

be done by an endorsement under the hand of the secretary or other proper officer of the authority by whom such certificate was granted.

Board of Trade to examine and grant Pilotage Certificates to Master or Mate on Pilotage Authorities refusing to do so.

342. If upon complaint to the Board of Trade it appears to such Board that any such authority as aforesaid has, without reasonable cause, refused or neglected to examine any master or mate who has applied to them for the purpose, or after he has passed the examination has, without reasonable cause, refused or neglected to grant him a pilotage certificate, or that the examination of any such master or mate has been unfairly or improperly conducted, or that any terms imposed or sought to be imposed by such authority are unfair or improper, or that any pilotage certificate granted by such authority has been improperly withdrawn, the Board of Trade may, if in its judgment the circumstances appear to require it, appoint persons to examine such master or mate, and if he is found competent may grant him a pilotage certificate, containing the same particulars as would have been inserted in any certificate granted by such pilotage authorities as aforesaid, upon such terms and conditions, and subject to such regulations, as such Board may think fit; and such certificate shall have the same effect as if it had been granted by such pilotage authority as aforesaid; and such certificate shall be in force for one year, and may be renewed from year to year, either by the said authorities in manner hereinbefore mentioned, or by the Board of Trade, if such Board thinks fit, such renewal to be endorsed on the said certificate, either by such person as the Board of Trade may appoint for the purpose, or in manner hereinbefore provided as to certificates granted by any pilotage authority.

Fees to be paid upon such Certificates and Renewals thereof.

343. All masters or mates to or for whom any such pilotage certificates as aforesaid are granted or renewed by any pilotage authority shall pay to such authority, or as it directs, such fees upon their respective certificates and upon the renewals thereof as are from time to time fixed for that purpose by such authority, with the consent of the Board of Trade; and all masters and mates to or for whom any such certificates are granted or renewed by the Board of Trade shall pay to such Board, or as it directs, such fees upon their certificates and upon the renewals thereof as may be fixed by such Board, so nevertheless that in the case of pilotage certificates granted or renewed by the Board of Trade such fees shall in no case be less than the fees payable by the qualified pilots in the same districts upon their licences and the renewal thereof; and such fees shall in the case of certificates and renewals granted by pilotage authorities be applicable either to paying the expense of the examinations, or any other general expenses connected with pilotage incurred by such authorities, or to the pilots' superannuation fund of the district (if any), or otherwise for the benefit of the pilots appointed by such authorities, as such authorities think fit; and such fees shall in the case of pilotage certificates granted or renewed by the Board of Trade be applicable to the expense of the examinations, and the surplus (if

any) shall be applied for the benefit of the qualified pilots of the port or district to which such certificates apply, in such manner as such Board thinks fit.

Power to withdraw Pilotage Certificate.

344. If at any time it appears to the Board of Trade or to any pilotage authority that any master or mate to whom a pilotage certificate has been granted by such Board or authority has been guilty of misconduct, or has shown himself incompetent to pilot his ship, such Board or such authority (as the case may be) may thereupon withdraw his certificate, and such certificate shall thenceforth cease to be of any effect whatever.

PILOT BOATS (GENERAL).

Pilot Boats how to be provided.

345. All boats and ships regularly employed in the pilotage service of any district shall be approved and licenced by the pilotage authority of such district, who may, at their discretion, appoint and remove the master of such boats and ships.

Characteristics of Pilot Boats.

346. Every pilot boat or ship shall be distinguished by the following characteristics; (that is to say),

(1.) A black colour painted or tarred outside, with the exception of such names and numbers as are hereinafter mentioned; or such other distinguishing colour or colours as the pilotage authority of the district, with the consent of the Board of Trade, directs.

(2.) On her stern the name of the owner thereof and the port to which she belongs, painted in white letters at least one inch broad and three inches long, and on each bow the number of the licence of such boat or ship.

(3.) When afloat, a flag at the mast-head or on a sprit or staff, or in some other equally conspicuous situation; such flag to be of large dimensions compared with the size of the boat or ship carrying the same, and to be of two colours, the upper horizontal half white, and the lower horizontal half red.

And it shall be the duty of the master of such boat or ship to attend to the following particulars: First, that the boat or ship possesses all the above characteristics; secondly, that the aforesaid flag is kept clean and distinct, so as to be easily discerned at a proper distance; and, lastly, that the names and numbers before mentioned are not at any time concealed; and if default is made in any of the above particulars, he shall incur a penalty not exceeding twenty pounds for each default.

Qualified Pilot to display Flag though not in Pilot Boat.

347. Whenever any qualified pilot is carried off in a boat or ship not in the pilotage service, he shall exhibit a flag of the above description, in order to show that such boat or ship has a qualified pilot on board; and if he fails to do so, without reasonable cause, he shall incur a penalty not exceeding fifty pounds.

Penalty on ordinary Boat displaying Pilot Flag.

348. If any boat or ship, not having a licensed pilot on board, displays a flag of the above-mentioned description, there shall be incurred for every such offence a penalty not exceeding fifty pounds, to be recovered from the owner or from the master of such boat or ship. (See also 36 and 37 Vict., cap. 85, secs. 19 and 20, *post.*)

PILOT LICENCES (GENERAL).

Registry of Pilot Licence.

349. Every qualified pilot on his appointment shall receive a licence, containing his name and usual place of abode, together with a description of his person, and a specification of the limits within which he is qualified to act; and it shall be the duty of the principal officer of customs at the place at or nearest to which any qualified pilot may reside, upon his request, to register his licence; and no qualified pilot shall be entitled to act as such until his licence is so registered; and any qualified pilot acting beyond the limits for which he is qualified by his licence, shall be considered as an unqualified pilot.

Copies of Regulations to be furnished to qualified Pilot, and to be produced by him.

350. Every qualified pilot shall, upon receiving his licence, be furnished with a copy of such part of this Act as relates to pilotage, together with a copy of the rates, bye-laws, and regulations established within the district for which he is licensed; and he shall produce such copies to the master of any ship, or other person employing him, when required to do so, under a penalty in case of default not exceeding five pounds.

Qualified Pilot to produce Licence to Employer.

351. Every qualified pilot, while acting in that capacity, shall be provided with his licence, and produce the same to every person by whom he is employed, or to whom he tenders his services as pilot; and if he refuses to do so at the request of such person, he shall incur for each offence a penalty not exceeding ten pounds, and shall be subject to suspension or dismissal by the pilotage authority by whom he is licensed.

Licences to be delivered up when required, and returned on Death.

352. Every qualified pilot, when required by the pilotage authority who appointed him, shall produce or deliver up his licence; and on the death of any qualified pilot, the person into whose hands his licence happens to fall shall, without delay, transmit the same to the pilotage authority who appointed the deceased pilot; and any pilot or person failing to comply with the provisions of this section, shall incur a penalty not exceeding ten pounds. (See also 35 and 36 Vict., cap. 73, sec. 11, *post.*)

COMPULSORY PILOTAGE (GENERAL).

Compulsory Pilotage, in what Mode to be enforced.

353. Subject to any alteration to be made by any pilotage authority in pursuance of the power hereinbefore in that behalf given, the employment of pilots shall continue to be compulsory in all districts in which the same was by law compulsory, immediately before the time when this Act comes into operation; and all exemptions from compulsory pilotage then existing within such districts shall also continue in force; and every master of any unexempted ship navigating within any such district, who, after a qualified pilot has offered to take charge of such ship, or has made a signal for that purpose, either himself pilots such ship without possessing a pilotage certificate enabling him so to do, or employs or continues to employ an unqualified person to pilot her, and every master of any exempted ship navigating within any such district, who, after a qualified pilot has offered to take charge of such ship, or has made a signal for that purpose, employs or continues to employ an unqualified pilot to pilot her, shall, for every such offence, incur a penalty of double the amount of pilotage demandable for the conduct of such ship.

Home-trade Passenger-Ships to employ qualified Pilots, unless they have certificated Masters or Mates.

354. The master of every ship carrying passengers between any place situate in the United Kingdom, or the islands of *Guernsey*, *Jersey*, *Sark*, *Alderney*, and *Man*, and any other place so situate, when navigating upon any waters situate within the limits of any district for which pilots are licensed by any pilotage authority under the provisions of this or of any other Act, or upon any part thereof so situate, shall, unless he or his mate has a pilotage certificate enabling such master or mate to pilot the said ship within such district, granted under the provisions hereinbefore contained, or such certificate as next hereinafter mentioned, being a certificate applicable to such district and to such ship, employ a qualified pilot to pilot his ship; and if he fails so to do he shall, for every offence, incur a penalty not exceeding one hundred pounds.

Certificates, how to be granted to such Masters and Mates.

355. Any master or mate of a ship which, by the last preceding section, is made subject to compulsory pilotage, may apply to the Board of Trade for a certificate, and the Board of Trade shall thereupon, on satisfactory proof of his having continuously piloted any ship within the limits of any pilotage district, or of any part or parts thereof for two years prior to the commencement of this Act, or upon satisfactory proof by examination of his competency, or otherwise as it may deem expedient, cause to be granted to him, or to be endorsed on any certificate of competency or service obtained by him under the third part of this Act, a certificate to the effect that he is authorised to pilot any ship or ships belonging to the same owner, and of a draught of water not greater than such draught as may be specified in the certificate within the limits aforesaid; and the said certificate

shall remain in force for such time as the Board of Trade directs, and shall enable the master or mate therein named to conduct the ship or ships therein specified within the limits therein described to the same extent as if the last preceding section had not been passed, but not further or otherwise; and every such master or mate shall, upon applying for such certificate or for any renewal thereof, pay to the Board of Trade or as it directs such fees not exceeding the fees payable on an examination for a master's certificate of competency under the third part of this Act as the Board of Trade directs; and such fees shall be applied in the same manner in which the fees payable on such last-mentioned examination are made applicable.

RIGHTS, PRIVILEGES, AND REMUNERATION OF PILOTS (GENERAL).

Qualified Pilot unable to Board, when entitled to Pilotage.

356. If any boat or ship, having a qualified pilot on board, leads any ship which has not a qualified pilot on board when such last-mentioned ship cannot from particular circumstances be boarded, the pilot so leading such last-mentioned ship shall be entitled to the full pilotage for the distance run as if he had actually been on board and had charge of such ship.

Allowance to qualified Pilot taken out of his District.

357. No pilot, except under circumstances of unavoidable necessity, shall without his consent be taken to sea or beyond the limits for which he is licensed in any ship whatever; and every pilot so taken under circumstances of unavoidable necessity or without his consent shall be entitled, over and above his pilotage, to the sum of ten shillings and sixpence a day, to be computed from and inclusive of the day on which such ship passes the limit to which he was engaged to pilot her up to and inclusive of the day of his being returned in the said ship to the place where he was taken on board, or up to and inclusive of such day as will allow him, if discharged from the ship, sufficient time to return thereto; and in such last-mentioned case he shall be entitled to his reasonable travelling expenses.

Penalty on qualified Pilot receiving or Master offering improper rate.

358. Any qualified pilot demanding or receiving, and also any master offering or paying to any pilot, any other rate in respect of pilotage services, whether greater or less, than the rate for the time being demandable by law, shall for each offence incur a penalty not exceeding ten pounds. (See also 35 and 36 Vict., cap. 73, sec. 9.)

Penalty on making a False Declaration as to Draught of Ship or Falsifying Marks.

359. If any master, on being requested by any qualified pilot having the charge of his ship to declare her draught of water, refuses to do so, or himself makes or is privy to any other person making a false declaration to such pilot as to such draught, he shall incur a penalty for every such offence not exceeding double the amount of pilotage which would have

been payable to the pilot making such request; and if any master or other person interested in a ship makes, or is privy to any other person making, any fraudulent alteration in the marks on the stem or stern post of such ship denoting her draught of water, the offender shall incur a penalty not exceeding five hundred pounds.

Power of qualified Pilot to supersede unqualified Pilot.

360. A qualified pilot may supersede an unqualified pilot, but it shall be lawful for the master to pay to such unqualified pilot a proportionate sum for his services, and to deduct the same from the charge of the qualified pilot; and in case of dispute the pilotage authority by whom the qualified pilot is licensed shall determine the proportionate sums to which each party is entitled.

Penalty on unqualified Person acting as Pilot.

361. An unqualified pilot assuming or continuing in the charge of any ship after a qualified pilot has offered to take charge of her, or using a licence which he is not entitled to use for the purpose of making himself appear to be a qualified pilot, shall for each offence incur a penalty not exceeding fifty pounds.

Occasions on which unlicensed Persons may act as Pilots.

362. An unqualified pilot may, within any pilotage district, without subjecting himself or his employer to any penalty, take charge of a ship as pilot under the following circumstances; (that is to say),

When no qualified pilot has offered to take charge of such ship, or made a signal for that purpose; or,

When a ship is in distress or under circumstances making it necessary for the master to avail himself of the best assistance which can be found at the time; or,

For the purpose of changing the moorings of any ship in port, or of taking her into or out of any dock, in cases where such act can be done by an unqualified pilot without infringing the regulations of the port or any orders which the harbour-master is legally empowered to give.

Liability for and Recovery of Pilotage Dues.

363. The following persons shall be made to pay pilotage dues for any ship for which the services of a qualified pilot are obtained (that is to say), The owner or master, or such consignees or agents thereof as have paid or made themselves liable to pay any other charge on account of such ship in the port of her arrival or discharge, as to pilotage inwards, and in the port from which she clears out as to pilotage outwards; and in default of payment such pilotage dues may be recoved in the same manner as penalties of the like amount may be recovered by virtue of this Act; but such recovery shall not take place until a previous demand thereof has been made in writing, and the dues so demanded have remained unpaid for seven days after the time of such demand being made.

Power for Consignees to retain Pilotage Dues paid by them.

364. Every consignee and agent (not being the owner or master) hereby made liable for the payment of pilotage dues in respect of any ship may, out of any moneys in his hands received on account of such ship or belonging to the owner thereof, retain the amount of all dues so paid by him, together with any reasonable expenses he may have incurred by reason of such payment or liability.

OFFENCES OF PILOTS (GENERAL).

Penalties on qualified Pilot.

365. If any qualified pilot commits any of the following offences; (that is to say),

Exercising certain Trades.

(1.) Keeps himself, or is interested in keeping by any agent, servant, or other person, any public-house or place of public entertainment, or sells or is interested in selling any wine, spirituous liquors, tobacco, or tea:

Offending against Revenue.

(2.) Commits any fraud or other offence against the revenues of customs or excise or the laws relating thereto:

Guilty of Corrupt Practices.

(3.) Is in any way directly or indirectly concerned in any corrupt practices relating to ships, their tackle, furniture, cargoes, crews, or passengers, or to persons in distress at sea or by shipwreck, or to their moneys, goods, or chattels:

Lending Licence.

(4.) Lends his licence:

Acting when Suspended.

(5.) Acts as pilot while suspended:

Acting when Drunk.

(6.) Acts as pilot when in a state of intoxication:

Unnecessarily causing Expense.

(7.) Employs or causes to be employed on board any ship of which he has the charge any boat, anchor, cable, or other store, matter, or thing beyond what is necessary for the service of such ship, with the intent to enhance the expenses of pilotage for his own gain or for the gain of any other person:

Declining to go off.

(8.) Refuses or wilfully delays, when not prevented by illness or other reasonable cause, to take charge of any ship within the limits of his

licence upon the signal for a pilot being made by such ship, or upon being required to do so, by the master, owner, agent, or consignee thereof, or by any officer of the pilotage authority by whom such pilot is licensed, or by any principal officer of customs :

Unnecessarily Cutting or Slipping Cable.

(9.) Unnecessarily cuts or slips or causes to be cut or slipped any cable belonging to any ship :

Refusing to conduct Ship into Port.

(10.) Refuses, on the request of the master, to conduct the ship of which he has the charge into any port or place into which he is qualified to conduct the same, except on reasonable ground of danger to the ship :

Quitting Ship.

(11.) Quits the ship of which he has the charge, without the consent of the master, before the service for which he was hired has been performed :

He shall for each such offence, in addition to any liability for damages at the suit of the person aggrieved, incur a penalty not exceeding one hundred pounds, and be liable to suspension or dismissal by the pilotage authority by whom he is licensed; and every person who procures, abets, or connives at the commission of any such offence shall likewise, in addition to any such liability for damages as aforesaid, incur a penalty not exceeding one hundred pounds, and, if a qualified pilot, shall be liable to suspension or dismissal by the pilotage authority by whom he is licensed.

Penalty on Pilot endangering Ship, Life, or Limb.

366. If any pilot, when in charge of any ship, by wilful breach of duty or by neglect of duty, or by reason of drunkenness, does any act tending to the immediate loss, destruction, or serious damage of such ship, or tending immediately to endanger the life or limb of any person on board such ship; or if any pilot, by wilful breach of duty, or by neglect of duty, or by reason of drunkenness, refuses or omits to do any lawful act proper and requisite to be done by him for preserving such ship from loss, destruction, or serious damage, or for preserving any person belonging to or on board of such ship from danger to life or limb; the pilot so offending shall for each such offence be deemed guilty of a misdemeanour, and, if a qualified pilot, also be liable to suspension and dismissal by the authority by which he is licensed.

Penalty on Pilot in charge of a Ship doing her wilful Injury.

367. If any person, by wilful misrepresentation of circumstances upon which the safety of a ship may depend, obtains or endeavours to obtain the charge of such ship, such person, and every other person procuring, abetting, or conniving at the commission of such offence, shall, in addition to any liability for damages at the suit of the party aggrieved, incur a penalty not exceeding one hundred pounds, and, if the offender is a qualified pilot, he shall also be liable to suspension or dismissal by the pilotage authority by which he is licensed.

GENERAL POWER OF TRINITY HOUSE.

Power of Trinity House to alter Regulations.

368. The *Trinity House* may, in exercise of the general power hereinbefore given to all pilotage authorities of doing certain things in relation to pilotage matters, alter such of the provisions hereinafter contained as are expressed to be subject to alteration by them in the same manner and to the same extent as they might have altered the same if such provisions had been contained in any previous Act of Parliament instead of in this Act.

SUB-COMMISSIONERS AND PILOTS (TRINITY HOUSE).

Power of Trinity House to appoint Sub-Commissioners.

369. The *Trinity House* shall continue to appoint sub-commissioners, not being more than five nor less than three in number, for the purpose of examining pilots in all districts in which they have been used to make such appointments, and may, with the consent of Her Majesty in council, but not otherwise, appoint like sub-commissioners for any other district in which no particular provision is made by any Act of Parliament or charter for the appointment of pilots; but no pilotage district already under the authority of any sub-commissioners appointed by the *Trinity House* shall be extended, except with such consent as aforesaid, and no sub-commissioners as appointed shall be deemed to be pilotage authorities within the meaning of this Act.

Trinity House to License Pilot to act within certain Limits.

370. The *Trinity House* shall continue, after due examination by themselves or their sub-commissioners, to appoint and license under their common seal pilots for the purpose of conducting ships within the limits following or any portion of such limits; (that is to say),

(1.) "The *London* District," comprising the waters of the *Thames* and *Medway* as high as *London Bridge* and *Rochester Bridge* respectively, and also the seas and channels leading thereto or therefrom as far as *Oxfordness* to the north and *Dungeness* to the south; so, nevertheless, that no pilot shall be hereafter licensed to conduct ships both above and below *Gravesend*.

(2.) "The *English Channel* District," comprising the seas between *Dungeness* and the *Isle of Wight*.

(3.) "The *Trinity House* Outport Districts," comprising any pilotage district for the appointment of pilots within which no particular provision is made by any Act of Parliament or charter.

Publication of Notice of Licences of Pilots by the Trinity House of Pilots.

371. Subject to any alteration to be made by the *Trinity House*, the names of all pilots licensed by the *Trinity House* shall be published in manner following; (that is to say),

(1.) The *Trinity House* shall at their house in *London* fix up a notice specifying the name and usual place of abode of every pilot so licensed, and the limits within which he is licensed to act.

(2.) The *Trinity House* shall transmit a copy of such notice to the Commissioners of Customs in *London*, and to the principal officers of customs resident at all ports within the limits for which such pilot is licensed; and such notice shall be posted up by the Commissioners at the custom-house in *London*, and by such officers at the custom-houses of the ports at which they are respectively resident.

Bonds to be given.

372. Subject to any alteration to be made by the *Trinity House*, every *Trinity House* pilot on his appointment shall execute a bond for one hundred pounds conditioned for the due observance on his part of the regulations and bye-laws of the *Trinity House*, such bond to be free from stamp duty, and from any other charge except the actual expense of preparing the same.

Liability Limited.

373. No qualified pilot who has executed such bond as is hereinbefore mentioned shall be liable for neglect or want of skill beyond its penalty and the amount of pilotage payable to him in respect of the voyage on which he is engaged.

Continuance and renewal of Licences.

374. Subject to any alteration to be made by the *Trinity House*, no licence granted by them shall continue in force beyond the thirty-first day of *January* next ensuing the date of such licence, but the same may, upon the application of the pilot holding such licence, be renewed on such thirty-first day of *January* in every year, or any subsequent day, by endorsement under the hand of the secretary of the *Trinity House*, or such other person as may be appointed by them for that purpose.

Power to Revoke and Suspend Licences.

375. The *Trinity House* shall have power to revoke or suspend the licence of any pilot appointed by them, in such manner and at such time as they think fit.

COMPULSORY PILOTAGE (TRINITY HOUSE).

Penalty on Masters employing unlicensed Pilots, or acting as Pilot.

376. Subject to any alteration to be made by the *Trinity House*, and to the exemptions hereinafter contained, the pilotage districts of the *Trinity House* within which the employment of pilots is compulsory are the *London* district and *Trinity House* outport districts, as hereinbefore defined; and the master of every ship navigating within any part of such district or districts, who, after a qualified pilot has offered to take charge of such ship, or has made a signal for that purpose, either himself pilots such ship without possessing a certificate enabling him so to do, or employs or continues

to employ an unqualified person to pilot her, shall for every such offence, in addition to the penalty hereinbefore specified, if the *Trinity House* certify in writing under their common seal that the prosecutor is to be at liberty to proceed for the recovery of such additional penalty, incur an additional penalty not exceeding five pounds for every fifty tons burden of such ship.

Trinity House to make Regulations for a constant Supply of qualified Pilots at Dungeness.

377. Subject to any alteration to be made by the *Trinity House*, a sufficient number of qualified pilots shall always be ready to take charge of ships coming from the westward past *Dungeness*; and the *Trinity House* shall by bye-law to be made in the same manner as other bye-laws made under the powers herein contained, make such regulations with respect to the pilots under their control as may be necessary in order to provide for an unintermitted supply of qualified pilots for such ships, and to insure their constant attendance upon and due performance of their duty both by night and day, whether by cruising between the *South Foreland* and *Dungeness*, or by going off from shore upon signals made for the purpose, or by both of such means, or by any other means, and whether in rotation or otherwise, as the *Trinity House* think fit.

Ship coming past Dungeness not having Pilot on board to take the first qualified Pilot who offers. Penalty on Masters failing to display usual signal for Pilot.

378. Subject to any alteration to be made by the *Trinity House*, every master of any ship coming from the westward, and bound to any place in the rivers *Thames* and *Medway*, (unless she has a qualified pilot on board or is exempted from compulsory pilotage), shall, on the arrival of such ship off *Dungeness*, and thenceforth until she has passed the south buoy of the *Brake*, or a line to be drawn from *Sandown Castle* to the said buoy, or until a qualified pilot has come on board, display and keep flying the usual signal for a pilot; and if any qualified pilot is within hail, or is approaching and within half a mile, and has the proper distinguishing flag flying in his boat, such master shall, by heaving-to in proper time or shortening sail, or by any practicable means consistent with the safety of his ship, facilitate such pilot getting on board, and shall give the charge of piloting his ship to such pilot; or if there are two or more of such pilots offering at the same time, to such one of them as may, according to the regulations for the time being in force, be entitled or required to take such charge; and if any such master fails to display or keep flying the usual signal for a pilot in manner hereinbefore required, or to facilitate any such qualified pilot as aforesaid getting on board as hereinbefore required, or to give the charge of piloting his ship to such pilot as hereinbefore mentioned in that behalf, he shall incur a penalty not exceeding double the sum which might have been demanded for the pilotage of his ship, such penalty to be paid to the *Trinity House*, and to be carried to the account of the *Trinity House* pilot fund.

Exemptions from Compulsory Pilotage.

379. The following ships, when not carrying passengers, shall be exempted from compulsory pilotage in the *London* district, and in the *Trinity House* outport districts; (that is to say),

(1.) Ships employed in the coasting trade of the United Kingdom.

(2.) Ships of not more than sixty tons burden.

(3.) Ships trading to *Boulogne* or to any place in *Europe* north of *Boulogne.*

(4.) Ships from *Guernsey, Jersey, Alderney, Sark,* or *Man* which are wholly laden with stone being the produce of those islands.

(5.) Ships navigating within the limits of the port to which they belong.

(6.) Ships passing through the limits of any pilotage district on their voyages between two places both situate out of such limits, and not being bound to any place within such limits nor anchoring therein. (See also 25 and 26 Vict., cap. 63, sec. 41, *post.*)

RATES OF PILOTAGE (TRINITY HOUSE).

Rates of Pilotage.

380 Subject to any alteration to be made by the *Trinity House,* there shall continue to be paid to all *Trinity House* pilots, in respect of their pilotages services, such dues as are immediately before the time when this Act comes into operation payable to them in respect of such services.

Payment of Pilotage dues from Foreign Ships trading to and from the Port of London.

381. Subject to any alteration to be made by the *Trinity House,* and notwithstanding anything hereinbefore contained, there shall be paid in respect of all foreign ships trading to and from the Port of *London,* and not exempted from pilotage, the following pilotage dues: that is to say, as to ships inwards, the full amount of dues for the distance piloted, and as to ships outwards, the full amount of dues for the distance required by law; and payment of such pilotage dues shall be made to the collector of customs in the Port of *London* by some one or more of the following persons, that is to say, the master or other person having the charge of such ship, or the consignees or agents thereof who have paid or made themselves liable to pay any other charge for such ship in the said Port of *London:* and such pilotage may be recovered in the same manner as other pilotage dues are hereinbefore declared to be recoverable.

Certificate of Payment of Pilotage to be given.

382. Subject to any alteration to be made by the *Trinity House,* the said collector of customs shall, on receiving any pilotage dues in respect of foreign ships, give to the person paying the same a receipt in writing; and no officer of customs in the Port of *London* shall grant a clearance or transire for any such foreign ship as aforesaid without the production of such receipt; and if any such ship attempts to go to sea without such clearance or transire, any such officer may detain her until the said receipt is produced.

Application of such Moneys by Trinity House.

383. Subject to any alteration to be made by the *Trinity House*, the said collector shall pay over to the *Trinity House* the pilotage dues received by him in respect of any foreign ship; and the *Trinity House* shall apply the same in manner following:

In the first place, in paying to any pilot who may bring sufficient proof of his having had the charge of such ship such dues as would have been payable to him for such pilotage service if the ship had been a *British* ship, after deducting therefrom the poundage due to the *Trinity House*.

In the second place, in paying to any unlicensed person who may bring sufficient proof of his having, in the absence of a licensed pilot, had the charge of such ship, such amount as the *Trinity House* may think proper, not exceeding the amount which would under similar circumstances have been payable to a licensed pilot, after deducting poundage.

And, lastly, shall pay over to the *Trinity House* pilots' fund the residue, together with all poundage deducted as aforesaid.

Settlement of Difference as to Draught of Ship.

384. Whenever any difference arises between the master and the qualified pilot of any ship trading to or from the Port of *London* as to her draught of water, the *Trinity House* shall upon application by either party, made, in case of a ship inward-bound, within twelve hours after her arrival or at some time before she begins to discharge her cargo, and in the case of a ship outward-bound, before she quits her moorings, appoint some proper officer who shall measure the ship, and settle the difference accordingly: and there shall be paid to the officer measuring such ship, by the party against whom he decides, the following sums (that is to say), one guinea if the ship be below and half a guinea if the ship be above the entrance of the *London Docks* at *Wapping*.

PILOT FUND (TRINITY HOUSE).

Payments to be made to the Pilot Fund.

385. Subject to any alteration to be made by the *Trinity House*, there shall continue to be paid to them, and carried over to the *Trinity House* pilot fund, the sums of money following; (that is to say),

(1.) A poundage of sixpence in the pound upon the pilotage earnings of all pilots licensed by the *Trinity House*.

(2.) A sum of three pounds three shillings to be paid on the first day of *January* in every year by every person licensed by the *Trinity House* to act as pilot in any district not under the superintendence of sub-commissioners, or in any part of such district.

And any qualified pilot giving a false account of his earnings, or making default in payment of any sum due from him under this section, shall forfeit double the amount payable, and shall further be liable, at the discretion of the *Trinity House*, to suspension or dismissal.

Application of Fund.

386. Subject to any prior charges that may be subsisting thereon by virtue of any Act or Acts of Parliament or otherwise, the said *Trinity House* pilot fund shall be chargeable in the first instance with such expenses as the *Trinity House* may duly incur in performance of their duties in respect of pilots and pilotage, and after payment thereof shall, subject to any alteration to be made by the *Trinity House*, be administered by the *Trinity House* for the benefit of such pilots licensed by them after the first day of *October* one thousand eight hundred and fifty-three as are incapacitated for the performance of their duty by reason of age, infirmity, or accident, or of the widows and children of pilots so licensed, or of such incapacitated pilots only.

APPOINTMENT OF SUB-COMMISSIONERS BY TRINITY HOUSES OF HULL AND NEWCASTLE.

Power to Trinity Houses of Hull and Newcastle to appoint Sub-Commissioners.

387. The two corporations of the Trinity Houses of the ports of *Hull* and *Newcastle* shall continue to appoint sub-commissioners, not being more than seven nor less than three in number, for the purpose of examining pilots in all districts in which they have been used to make such appointments, and may, with the consent of Her Majesty in council, but not otherwise, appoint like sub-commissioners for any other district situate within their respective jurisdictions; but no pilotage district already under the authority of any sub-commissioners appointed by either of the said corporations shall be extended, except with such consent as aforesaid; and no sub-commissioners appointed or to be appointed by the Trinity Houses of *Hull* and *Newcastle* shall be deemed to be pilotage authorities within the meaning of this Act, nor shall anything in this Act contained be held to confer upon the commissioners for regulating the pilotage of the port of *Kingston-upon-Hull* and of the river *Humber* any jurisdiction of a different nature or character from that which they have heretofore exercised.

SAVING OF OWNERS AND MASTERS' RIGHTS.

Limitation of Liability of Owner where Pilotage is compulsory.

388. No owner or master of any ship shall be answerable to any person whatever for any loss or damage occasioned by the fault or incapacity of any qualified pilot acting in charge of such ship within any district where the employment of such pilot is compulsory by law. (See section 49 *et seq.* of 25 and 26 Vict., cap. 63.)

PART VI.

LIGHTHOUSES.

MANAGEMENT OF LIGHTHOUSES.

389. Management of lighthouses, buoys, and beacons to be in Trinity House, Commissioners of Northern Lighthouses, and Port of Dublin Corporation.

390. Incorporation of Commissioners of Northern Lighthouses.

391. Power to elect certain new members.

392. Trinity House may inspect lighthouses in Scotland and Ireland.

393. Board of Trade may appoint persons to inspect lighthouses, &c.

394. Power to General Lighthouse Authorities to control local authorities.

395. In case of default by local bodies local lighthouses may be transferred to General Lighthouse Authorities.

LIGHT DUES.

396. Dues to be levied.

397. Light dues to be subject to revision by Her Majesty in council.

398. Powers of General Lighthouse Authorities to alter and regulate dues.

399. Publication of dues and regulations.

400. Ship not to be cleared without production of receipt for light dues.

401. Power of distress for light dues.

402. Light dues, how to be paid over and accounted for.

403 Application of light dues.

NEW LIGHTHOUSES.

404. Power to Lighthouse Authorities to erect, place, and alter lighthouses, buoys, and beacons.

405. This power in the case of the commissioners and corporation to be subject to approval by Trinity House, with appeal to Board of Trade.

406. Sanction of Board of Trade, how to be obtained.

407. Trinity House to inform Lighthouse Authorities of decision of Board of Trade.

408. Power to Trinity House, with sanction of Board of Trade, to compel execution of works by commissioners and corporation.

409. Sanction of Board of Trade, how to be obtained.

410. Her Majesty may, by order in council, fix dues to be taken for new lighthouses.

411. No dues to be levied in the Channel Islands without consent of the States, and no power to be exercised therein but by order in council.

412. Incorporation of 8 and 9 Vict., cap. 18 and 19.

SURRENDER OF LOCAL LIGHTHOUSES.

413. Local lighthouses may be surrendered to General Lighthouse Authorities.

DAMAGE TO LIGHTS, BUOYS, AND BEACONS.

414. Penalty for injuring lights, buoys and beacons.

PREVENTION OF FALSE LIGHTS.

415. General Lighthouse Authorities may prohibit false lights.

416. If not obeyed they may abate such lights. (See section 43 *et seq.* of 25 and 26 Vict., cap. 63, *post.*)

PART VII.

MERCANTILE MARINE FUND.

417. Sums to be carried to Mercantile Marine Fund.

418. Application of Mercantile Marine Fund.

419. Application of Ballastage Rates, 6 and 7 Vict., cap. 57.

420. Establishments for Lighthouses and Ballastage charged on fund to be fixed by Her Majesty in council.

421. Power to grant superannuation allowances.

422. Estimates and accounts for other expenses to be approved by the Board of Trade.

423. No expense to be allowed unless sanctioned by Board of Trade.

424. For the purpose of erecting and repairing lighthouses and other extraordinary expenses, Treasury may advance money.

425. Power to Board of Trade to borrow money on the credit of fund.

426. Power to Public Works Loan Commissioners to advance money on the credit of the fund.

427. Lighthouse Authorities to account for receipts and expenditure to Board of Trade.

428. Accounts of funds to be audited by Commissioners of Audit.

429. Accounts to be laid before Parliament.

430. Property used for the purposes of Parts III. and VI. of Act to be exempt from all rates and taxes.

431. Ships and boats of Lighthouse Authorities exempt from harbour dues.

PART VIII.

WRECKS, CASUALTIES, AND SALVAGE.

Inquiries to be instituted in Cases of Wreck and Casualty.

432. In any of the cases following (that is to say),

Whenever any ship is lost, abandoned, or materially damaged on or near the coasts of the United Kingdom:

Whenever any ship causes loss or material damage to any other ship on or near such coasts:

Whenever by reason of any casualty happening to or on board of any ship on or near such coasts loss of life ensues:

Whenever any such loss, abandonment, damage, or casualty happens elsewhere, and any competent witnesses thereof arrive, or are found at any place in the United Kingdom:

It shall be lawful for the inspecting officer of the coastguard, or the principal officer of customs residing at or near the place where such loss, abandonment, damage, or casualty occurred, if the same occurred on or near the coasts of the United Kingdom, but, if elsewhere, at or near the place where such witnesses as aforesaid arrive, or are found, or can be conveniently examined, or for any other person appointed for the purpose by the Board of Trade, to make inquiry respecting such loss, abandonment, damage, or casualty; and he shall, for that purpose, have all the powers given by the first part of this Act to inspectors appointed by the said Board.

Formal Investigation before Justices.

433. If it appears to such officer or person as aforesaid, either upon or without any such preliminary inquiry as aforesaid, that a formal investigation is requisite or expedient, or if the Board of Trade so directs, he shall apply to any two justices or to a stipendiary magistrate to hear the case; and such justices or magistrate shall thereupon proceed to hear and try the same, and shall for that purpose, so far as relates to the summoning of parties, compelling the attendance of witnesses, and the regulation of the proceedings, have the same powers as if the same were a proceeding relating to an offence or cause of complaint upon which they or he have power to make a summary conviction or order, or as near thereto as circumstances permit; and it shall be the duty of such officer or person as aforesaid to superintend the management of the case, and to render such assistance to the said justices or magistrate as is in his power; and, upon the conclusion of the case, the said justices or magistrate shall send a report to the Board of Trade, containing a full statement of the case and of their or his opinion thereon, accompanied by such report of or extracts from the evidence, and such observations (if any) as they or he may think fit.

Power to appoint Nautical Assessor.

434. *In cases where nautical skill and knowledge are required, the Board of Trade shall have the power, either at the request of such justices or magistrate, or at its own discretion, to appoint some person of nautical skill and knowledge to act as assessor to such justices or magistrate; and such assessor shall, upon the conclusion of the case, either signify his concurrence in their report by signing the same, or if he dissents therefrom shall signify such dissent and his reasons therefor to the Board of Trade.* (Repealed by 39 and 40 Vict., cap. 80, *post.*)

Stipendiary Magistrate to be the Magistrate who is Member of Local Marine Board, and to be paid.

435. In places where there is a local marine board, and where a stipendiary magistrate is a member of such board, all such investigations as aforesaid shall, whenever he happens to be present, be made before such

magistrate; and there shall be paid to such magistrate in respect of his services under this Act such remuneration, whether by way of annual increase of salary or otherwise, as Her Majesty's Secretary of State for the Home Department, with the consent of the Board of Trade, may direct; and such remuneration shall be paid out of the Mercantile Marine Fund.

Costs of such Investigations.

436. The said justices or magistrate may make such order with respect to the costs of any such investigation or any portion thereof as they or he may deem just, and such cost shall be paid accordingly, and shall be recoverable in the same manner as other costs incurred in summary proceedings before them or him; and the Board of Trade may, if in any case it thinks fit so to do, pay the expense of any such investigation, and may pay to such assessor as aforesaid such remuneration as it thinks fit.

Investigations in Scotland.

437. *In the case of any such investigation as aforesaid to be held in Scotland, the Board of Trade may, if it so thinks fit, remit the same to the Lord Advocate to be prosecuted in such manner as he may direct, and in case he so requires, with the assistance of such person of nautical skill and knowledge as the Board of Trade may appoint for the purpose.* (Repealed by 39 and 40 Vict., cap. 80, *post.*)

Master or Mate may be required to deliver Certificate to be held until Close of Inquiry.

438. Such justices or magistrate as aforesaid may, or in *Scotland* such person or persons as is or are directed by the Lord Advocate to conduct the investigation may, if they or he think fit, require any master or mate possessing a certificate of competency or service whose conduct is called in question, or appears to them or him likely to be called in question in the course of such investigation, to deliver such certificate to them or him, and they or he shall hold the certificate so delivered until the conclusion of the investigation, and shall then either return the same to such master or mate, or, if their report is such as to enable the Board of Trade to cancel or suspend such certificate under the powers given to such Board by the third part of this Act, shall forward the same to the Board of Trade, to be dealt with as such Board thinks fit; and if any master or mate fails so to deliver his certificate when so required, he shall incur a penalty not exceeding fifty pounds.

APPOINTMENT AND DUTIES OF RECEIVERS.

Board of Trade Superintendents of Wreck, with Power to appoint Receivers.

439. The Board of Trade shall throughout the United Kingdom have the general superintendence of all matters relating to wreck; and it may, with the consent of the Commissioners of Her Majesty's Treasury, appoint any officer of customs or of the coastguard, or any officer of inland revenue, or when it appears to such Board to be more convenient, any other person, to be a receiver of wreck in any district, and to perform such duties as are hereinafter mentioned, and shall give due notice of every such appointment.

Admiral not to interfere with Wreck.

440. No admiral, vice-admiral, or other person, under whatever denomination, exercising Admiralty jurisdiction, shall as such, by himself or his agents, receive, take, or interfere with any wreck except as hereinafter mentioned.

Duty of Receiver when any Ship is Stranded or in Distress.

441. Whenever any ship or boat is stranded or in distress at any place on the shore of the sea or of any tidal water within the limits of the United Kingdom, the receiver of the district within which such place is situate shall, upon being made acquainted with such accident, forthwith proceed to such place, and upon his arrival there he shall take the command of all persons present, and assign such duties to each person, and issue such directions, as he may think fit with a view to the preservation of such ship or boat, and the lives of the persons belonging thereto, and the cargo and apparel thereof; and if any person wilfully disobeys such directions, he shall forfeit a sum not exceeding fifty pounds; but it shall not be lawful for such receiver to interfere between the master of such ship or boat and his crew in matters relating to the management thereof, unless he is requested so to do by such master.

Powers of Receiver in case of such Accident to any Ship or Boat.

442. The receiver may, with a view to such preservation as aforesaid of the ship or boat, persons, cargo, and apparel, do the following things; (that is to say),

(1.) Summon such number of men as he thinks necessary to assist him.

(2.) Require the master or other person having the charge of any ship or boat near at hand to give such aid with his men, ship, or boats as may be in his power.

(3.) Demand the use of any waggon, cart, or horses that may be near at hand.

And any person refusing without reasonable cause to comply with any summons, requisition, or demand so made as aforesaid, shall, for every such refusal, incur a penalty not exceeding one hundred pounds; but no person shall be liable to pay any duty of assessed taxes in respect of any such waggon, cart, or horses by reason of the user of the same under this section.

All Articles washed on Shore, or Lost, or taken from any Ship or Boat, to be delivered to the Receiver.

443. All cargo and other articles belonging to such ship or boat as aforesaid, that may be washed on shore, or otherwise be lost or taken from such ship or boat, shall be delivered to the receiver; and any person, whether he is the owner or not, who secretes or keeps possession of any such cargo or article, or refuses to deliver the same to the receiver or to any person authorised by him to demand the same, shall incur a penalty not exceeding one hundred pounds; and it shall be lawful for such receiver, or other person as aforesaid, to take such cargo or article by force from the person so refusing to deliver the same.

Power of Receiver to suppress Plunder and Disorder by Force.

444. Whenever any such accident as aforesaid occurs to any ship or boat, and any person plunders, creates disorder, or obstructs the preservation of such ship, boat, lives, or cargo as aforesaid, it shall be lawful for the receiver to cause such person to be apprehended, and to use force for the suppression of any such plundering, disorder, or obstruction as aforesaid, with power to command all Her Majesty's subjects to assist him in the use of such force; and if any person is killed, maimed, or hurt by reason of his resisting the receiver in the execution of the duties hereby committed to him, or any person acting under his orders, such receiver or other person shall be free and fully indemnified as well against the Queen's Majesty, her heirs and successors, as against all persons so killed, maimed, or hurt.

Certain Officers to exercise Powers of Receiver in his Absence.

445. During the absence of the receiver from the place where any such accident as aforesaid occurs, or in places where no receiver has been appointed under this Act, the following officers in succession, each in the absence of the other, in the order in which they are named, that is to say, any principal officer of customs or of the coastguard, or officer of inland revenue, and also any sheriff, justice of the peace, commissioned officer on full pay in the naval service of Her Majesty, or commissioned officer on full pay in the military service of Her Majesty, may do all matters and things hereby authorised to be done by the receiver, with this exception, that with respect to any goods or articles belonging to any such ship or boat, the delivery up of which to the receiver is hereinbefore required, any officer so acting shall be considered as the agent of the receiver, and shall place the same in the custody of the receiver; and no person so acting as substitute for any receiver shall be entitled to any fees payable to receivers, or be deprived by reason of his so acting of any right to salvage to which he would otherwise be entitled.

Power in case of a Ship being in Distress to pass over adjoining Lands with Carriages.

446. Whenever any such accident as aforesaid occurs to any ship or boat, all persons may, for the purpose of rendering assistance to such ship or boat, or saving the lives of the persons on board the same, or the cargo or apparel thereof, unless there is some public road equally convenient, pass and repass either with or without carriages or horses over any adjoining lands, without being subject to interruption by the owner or occupier, so that they do as little damage as possible, and may also, on the like condition, deposit on such lands any cargo or other article recovered from such ship or boat; and all damage that may be sustained by any owner or occupier, in consequence of any such passing or repassing or deposit as aforesaid, shall be a charge on the ship, boat, cargo, or articles in respect of or by which such damage was occasioned, and shall, in default of payment, be recoverable in the same manner as salvage is hereby made recoverable; and the amount payable in respect thereof, if disputed, shall be determined in the same manner as the amount of salvage is hereby in case of dispute directed to be determined.

Penalty on Owners and Occupiers of Land refusing to allow Carriages &c., to pass over their Land.

447. If the owner or occupier of any land over which any person is hereby authorised to pass or repass for any of the purposes hereinbefore mentioned does any of the following things; (that is to say),

(1.) Impedes or hinders any such person from so passing or repassing, with or without carriages, horses, and servants, by locking his gates, refusing, upon request, to open the same, or otherwise however:

(2.) Impedes or hinders the deposit of any cargo or other article recovered from any such ship or boat, as hereinbefore mentioned:

(3.) Prevents such cargo or other article from remaining so deposited a reasonable time, until the same can be removed to a safe place of public deposit:

He shall for every such offence incur a penalty not exceeding one hundred pounds.

Power of Receiver to institute Examination with respect to Ships in Distress.

448. Any receiver, or in his absence any justice of the peace, shall, as soon as conveniently may be, examine upon oath (which oath they are hereby respectively empowered to administer) any person belonging to any ship which may be or may have been in distress on the coasts of the United Kingdom, or any other person who may be able to give any account thereof or of the cargo or stores thereof, as to the following matters; (that is to say),

(1.) The name and description of the ship.

(2.) The name of the master and of the owners.

(3.) The names of the owners of the cargo.

(4.) The ports or places from and to which the ship was bound.

(5.) The occasion of the distress of the ship.

(6.) The services rendered.

(7.) Such other matters or circumstances relating to such ship, or to the cargo on board the same, as the receiver or justice thinks necessary.

And such receiver or justice shall take the examination down in writing, and shall make two copies of the same, of which he shall send one to the Board of Trade, and the other to the secretary of the committee for managing the affairs of *Lloyd's* in *London*, and such last-mentioned copy shall be placed by the said secretary in some conspicuous situation for the inspection of persons desirous of examining the same; and for the purposes of such examination, every such receiver or justice as aforesaid shall have all the powers given by the first part of this Act to inspectors appointed by the Board of Trade.

Original or certified Copy of Examination to be primâ facie Evidence.

449. *Any examination so taken in writing as aforesaid, or a copy thereof purporting to be certified under the hand of the receiver or justice before whom such examination was taken, shall be admitted in evidence in any court of justice, or before any person having by law or by consent of parties authority to hear, receive, and examine evidence, as* primâ facie *proof of all matters contained in such written examination.* (Repealed by 39 and 40 Vict., cap. 80, *post.*)

Rules to be observed by Persons finding Wreck.

450. The following rules shall be observed by any person finding or taking possession of wreck within the United Kingdom; (that is to say),

(1.) If the person so finding or taking possession of the same is the owner, he shall as soon as possible give notice to the receiver of the district within which such wreck is found, stating that he has so found or taken possession of the same; and he shall describe in such notice the marks by which such wreck is distinguished.

(2.) If any person not being the owner finds or takes possession of any wreck, he shall as soon as possible deliver the same to such receiver as aforesaid.

And any person making default in obeying the provisions of this section shall incur the following penalties; (that is to say),

(3.) If he is the owner, and makes default in performing the several things the performance of which is hereby imposed on an owner,

He shall incur a penalty not exceeding one hundred pounds.

(4.) If he is not the owner, and makes default in performing the several things the performance of which is hereby imposed on any person not being an owner,

He shall forfeit all claim to salvage;

He shall pay to the owner of such wreck, if the same is claimed, but if the same is unclaimed, then to the person entitled to such unclaimed wreck, double the value of such wreck (such value to be recovered in the same way as a penalty of like amount); and

He shall incur a penalty not exceeding one hundred pounds.

Power of Receivers to seize concealed Wreck.

451. If any receiver suspects or receives information that any wreck is secreted or in the possession of some person who is not the owner thereof, or otherwise improperly dealt with, he may apply to any justice of the peace for a warrant, and such justice shall have power to grant a warrant, by virtue whereof it shall be lawful for the receiver to enter into any house or other place wherever situate, and also into any ship or boat, and to search for, and to seize and detain, any such wreck as aforesaid there found: and if any such seizure is made in consequence of information that may have been given by any person to the receiver, the informer shall be entitled, by way of salvage, to such sum not exceeding in any case five pounds, as the receiver may allow.

Notice of Wreck to be given by Receiver.

452. Every receiver shall, within forty-eight hours after taking possession of any wreck, cause to be posted up in the custom-house of the port nearest to the place where such wreck was found or seized, a description of the same and of any marks by which it is distinguished, and shall also, if the value of such wreck exceeds twenty pounds, but not otherwise, transmit a similar description to the secretary of the committee of *Lloyd's* aforesaid; and such secretary shall post up the description so sent, or a

copy thereof, in some conspicuous place, for the inspection of all persons desirous of examining the same.

Goods if deemed perishable or of small value may be sold immediately.

453. In cases where any wreck in the custody of any receiver is under the value of five pounds, or is of so perishable a nature or so much damaged that the same cannot, in his opinion, be advantageously kept, or if the value thereof is not sufficient to defray the charge of warehousing, the receiver may sell the same before the expiration of the period hereinafter mentioned, and the money raised by such sale, after defraying the expenses thereof, shall be held by the receiver for the same purposes, and subject to the same claims, for and to which the article sold would have been held and liable if it had remained unsold.

In Cases where any Lord of the Manor or other Person is entitled to unclaimed Wreck, Receiver to give Notice to him.

454. In cases where any admiral, vice-admiral, lord of the manor, or other person is entitled for his own use to unclaimed wreck, found on any place situate within a district for which a receiver is appointed, such admiral, vice-admiral, lord of the manor, or other person, shall deliver to such receiver a statement containing the particulars of his title, and the address to which notices are to be sent; and upon such statement being so delivered, and proof made to the satisfaction of the receiver of the validity of such title, it shall be his duty, whenever he takes possession of any wreck found at any such place, to send within forty-eight hours thereafter a description of the same and of any marks by which it is distinguished, directed to such address as aforesaid.

Payments to be made to Receiver.

455. There shall be paid to all receivers appointed under this Act the expenses properly incurred by them in the performance of their duties, and also in respect of the several matters specified in the Table marked V. in the Schedule hereto, such fees, not exceeding the amount therein mentioned, as may from time to time be directed by the Board of Trade; and the receiver shall have the same lien, and be entitled to the same remedies, for the recovery of such expenses and fees as a salver has or is entitled to in respect of salvage due to him; but, save as aforesaid, no receiver appointed under this Act shall, as such, be entitled to any remuneration whatsoever.

Disputes as to Sums payable to Receiver to be determined by Board of Trade.

456. Whenever any dispute arises in any part of the United Kingdom as to any amount payable to any receiver in respect of expenses or fees, such dispute shall be determined by the Board of Trade, whose decision shall be final.

Application of Fees.

457. All fees received by any receiver appointed under this Act, in respect of any services performed by him as receiver, shall be carried to and form part of the Mercantile Marine Fund, and a separate account

thereof shall be kept, and the moneys arising therefrom shall be applied in defraying any expenses duly incurred in carrying into effect the purposes of the eighth part of this Act, in such manner as the Board of Trade directs.

SALVAGE IN THE UNITED KINGDOM.

Salvage in respect of Services rendered in the United Kingdom.

458. In the following cases (that is to say),

Whenever any ship or boat is stranded or otherwise in distress on the shore of any sea or tidal water situate within the limits of the United Kingdom, and services rendered by any person,

(1.) In assisting such ship or boat;

(2.) In saving the lives of the persons belonging to such ship or boat;

(3.) In saving the cargo or apparel of such ship or boat, or any portion thereof;

And whenever any wreck is saved by any person other than a receiver within the United Kingdom,

There shall be payable by the owners of such ship or boat, cargo, apparel, or wreck, to the person by whom such services or any of them are rendered, or by whom such wreck is saved, a reasonable amount of salvage, together with all expenses properly incurred by him in the performance of such services or the saving of such wreck, the amount of such salvage and expenses (which expenses are hereinafter included under the term salvage) to be determined in case of dispute in manner hereinafter mentioned. (See also 25 and 26 Vict., cap. 63, sec. 59, *post.*)

Salvage for Life may be paid by Board of Trade out of Mercantile Marine Fund.

459. Salvage in respect of the preservation of the life or lives of any person or persons belonging to any such ship or boat as aforesaid shall be payable by the owners of the ship or boat in priority to all other claims for salvage; and in cases where such ship or boat is destroyed, or where the value thereof is insufficient, after payment of the actual expenses incurred, to pay the amount of salvage due in respect of any life or lives, the Board of Trade may in its discretion award to the salvors of such life or lives out of the Mercantile Marine Fund such sum or sums as it deems fit, in whole or part satisfaction of any amount of salvage so left unpaid in respect of such life or lives.

Disputes as to Salvage how to be settled.

460. Disputes with respect to salvage arising within the boundaries of the Cinque Ports shall be determined in the manner in which the same have hitherto been determined; but whenever any dispute arises elsewhere in the United Kingdom between the owners of any such ship, boat, cargo, apparel, or wreck as aforesaid, and the salvors, as to the amount of salvage, and the parties to the dispute cannot agree as to the settlement thereof by arbitration or otherwise,

Then, if the sum claimed does not exceed two hundred pounds,

Such dispute shall be referred to the arbitration of any two justices of the peace resident as follows; (that is to say),

In case of wreck, resident at or near the place where such wreck is found.

In cases of services rendered to any ship or boat, or to the persons, cargo, or apparel belonging thereto, resident at or near the place where such ship or boat is lying, or at or near the first port or place in the United Kingdom into which such ship or boat is brought after the occurrence of the accident by reason whereof the claim to salvage arises.

But if the sum claimed exceeds two hundred pounds,

Such dispute may, with the consent of the parties, be referred to the arbitration of such justices as aforesaid, but if they do not consent, shall in *England* be decided by the High Court of Admiralty of *England*, in *Ireland* by the High Court of Admiralty of *Ireland*, and in *Scotland* by the Court of Session; subject to this proviso, that if the claimants in such dispute do not recover in such Court of Admiralty or Court of Session a greater sum than two hundred pounds, they shall not, unless the court certifies that the case is a fit one to be tried in a superior court, recover any costs, charges, or expenses incurred by them in the prosecution of their claim.

And every dispute with respect to salvage may be heard and adjudicated upon on the application either of the salvor or of the owner of the property salved, or of their respective agents. (See also 25 and 26 Vict., cap. 63, sec. 50, *post.*)

Manner in which Justices may decide Disputes.

461. Whenever in pursuance of this Act any dispute as to salvage is referred to the arbitration of two justices, they may either themselves determine the same, with power to call to their assistance any person conversant with maritime affairs as assessor, or they may, if a difference of opinion arises between them, or without such difference, if they think fit, appoint some person conversant with maritime affairs as umpire to decide the point in dispute; and such justices or their umpire shall make an award as to the amount of salvage payable within the following times, that is to say, the said justices within forty-eight hours after such dispute has been referred to them, and the said umpire within forty-eight hours after his appointment, with power nevertheless for such justices or umpire by writing under their or his hands or hand, to extend the time within which they and he are hereby respectively directed to make their or his award. (See also 25 and 26 Vict., cap. 63, sec. 49, *post.*)

Costs of Arbitration Justices.

462. There shall be paid to every assessor and umpire, who may be so appointed as aforesaid in respect of his services such sum not exceeding five pounds as the Board of Trade may from time to time direct; and all the costs of such arbitration, including any such payments as aforesaid, shall be paid by the parties to the dispute, in such manner and in such

shares and proportions as the said justices or as the said umpire may direct by their or his award.

Justices may call for Documents, and administer Oaths.

463. The said justices or their umpire may call for the production of any documents in the possession or power of either party, which they or he may think necessary for determining the question in dispute, and may examine the parties or their witnesses on oath, and administer the oaths necessary for that purpose.

Appeal to Courts of Admiralty.

464. If any person is aggrieved by the award made by such justices or such umpire as aforesaid, he may in *England* appeal to the High Court of Admiralty of *England*, in *Ireland* to the High Court of Admiralty of *Ireland*, and in *Scotland* to the Court of Session; but no such appeal shall be allowed unless the sum in dispute exceeds fifty pounds, nor unless within ten days after the date of the award the appellant gives notice to the justices to whom the matter was referred of his intention to appeal, nor unless the appellant proceeds to take out a monition, or to take such other proceeding as according to the practice of the court of appeal is necessary for the institution of an appeal, within twenty days from the date of the award.

Justices to transmit Copy of Proceedings and Certificate of Value to Court of Appeal.

465. Whenever any appeal is made in manner hereinbefore provided, the justices shall transmit to the proper officer of the court of appeal a copy on unstamped paper, certified under their hands to be a true copy of the proceedings had before such justices or their umpire, if any, and of the award so made by them or him, accompanied with their or his certificate in writing of the gross value of the article respecting which salvage is claimed; and such copy and certificate shall be admitted in the court of appeal as evidence in the cause.

Payment of Salvage to whom to be made in case of Dispute as to Apportionment.

466. Whenever the aggregate amount of salvage payable in respect of salvage services rendered in the United Kingdom has been finally ascertained, either by agreement or by the award of such justices or their umpire, but a dispute arises as to the apportionment thereof among several claimants, then, if the amount does not exceed two hundred pounds, it shall be lawful for the party liable to pay the amount so due to apply to the receiver of the district for liberty to pay the amount so ascertained to him; and he shall, if he thinks fit, receive the same accordingly, and grant a certificate under his hand, stating the fact of such payment and the services in respect of which it is made; and such certificate shall be a full discharge and indemnity to the person or persons to whom it is given, and to their ship, boats, cargo, apparel, and effects, against the claims of all persons whomsoever in respect of the services therein mentioned; but if the amount exceeds two hundred pounds, it shall be apportioned in a manner hereinbefore mentioned.

Apportionment of Salvage.

467. Upon the receipt of any such amount as aforesaid, the receiver shall with all convenient speed proceed to distribute the same among the several persons entitled thereto, upon such evidence and in such shares and proportions as he thinks fit, with power to retain any moneys that may appear to him to be payable to any absent parties; but any distribution made in pursuance of this section shall be final and conclusive against the rights of all persons claiming to be entitled to any portion of the moneys so distributed.

Manner of enforcing Payment of Salvage.

468. Whenever any salvage is due to any person under this Act, the receiver shall act as follows; (that is to say),

(1). If the same is due in respect of services rendered in assisting any ship or boat, or in saving the lives of persons belonging to the same, or the cargo or apparel thereof,

He shall detain such ship or boat and the cargo and apparel belonging thereto until payment is made, or process has been issued by some competent court for the detention of such ship, boat, cargo, or apparel.

(2.) If the same is due in respect of the saving of any wreck, and such wreck is not sold as unclaimed in pursuance of the provisions hereinafter contained,

He shall detain such wreck until payment is made, or process has been issued in manner aforesaid.

But it shall be lawful for the receiver, if at any time previously to the issue of such process security is given to his satisfaction for the amount of salvage due, to release from his custody any ship, boat, cargo, apparel, or wreck so detained by him as aforesaid; and in cases where the claim for salvage exceeds two hundred pounds, it shall be lawful in *England* for the High Court of Admiralty of *England*, in *Ireland* for the High Court of Admiralty of *Ireland*, and in *Scotland* for the Court of Session, to determine any question that may arise concerning the amount of the security to be given or the sufficiency of the sureties; and in all cases where bond or other security is given to the receiver for an amount exceeding two hundred pounds, it shall be lawful for the salvor or for the owner of the property salved, or their respective agents, to institute proceedings in such last-mentioned courts for the purpose of having the questions arising between them adjudicated upon, and the said courts may enforce payment of the said bond or other security, in the same manner as if bail had been given in the said courts.

Power of Receiver to sell Property salved in cases of Non-payment.

469. Whenever any ship, boat, cargo, apparel, or wreck is detained by any receiver for non-payment of any sums so due as aforesaid, and the parties liable to pay the same are aware of such detention, then, in the following cases (that is to say),

(1.) In cases where the amount is not disputed, and payment thereof is not made within twenty days after the same has become due;

(2.) In cases where the amount is disputed, but no appeal lies from the first tribunal to which the dispute is referred, and payment thereof is not made within twenty days after the decision of such first tribunal;

(3). In cases where the amount is disputed, and an appeal lies from the decision of the first tribunal to some other tribunal, and payment thereof is not made within such twenty days as last aforesaid, or such monition as hereinbefore mentioned is not taken out within such twenty days, or such other proceedings as are according to the practice of such other tribunal necessary for the prosecution of an appeal are not instituted within such twenty days;

The receiver may forthwith sell such ship, boat, cargo, apparel, or wreck, or a sufficient part thereof, and out of the proceeds of the sale, after payment of all expenses thereof, defray all sums of money due in respect of expenses, fees, and salvage, paying the surplus, if any, to the owners of the property sold, or other the parties entitled to receive the same.

Subject to Payment of Expenses, Fees, and Salvage, Owner entitled to Wreck.

470. Subject to the payment of such expenses, fees, and salvage as aforesaid, the owner of any wreck who establishes his claim thereto to the satisfaction of the receiver within one year from the date at which such wreck has come into the possession of the receiver, shall be entitled to have the same delivered up to him.

UNCLAIMED WRECK IN THE UNITED KINGDOM.

Receiver to deliver up Possession of Unclaimed Wreck to the Lord of Manor or other Person entitled.

471. In the event of no owner establishing a claim to wreck found in any place in the United Kingdom before the expiration of a year from the date at which the same has come into the possession of the receiver, then, if any such admiral, vice-admiral, lord of any manor, or other person as aforesaid has given notice to and has proved to the satisfaction of the receiver that he is entitled to wreck found at such place, the receiver shall, upon payment of all expenses, fees, and salvage due in respect of such wreck, deliver up possession thereof to such admiral, vice-admiral, lord of the manor, or other person; and in case of dispute as to the amount of the sums so payable, and also in case of default being made in payment thereof, such dispute shall be determined and payment enforced in the manner in which such amount and payment is hereby directed to be determined and enforced in cases where any owner establishes his claim to wreck.

Disputed Title to Wreck how to be Decided.

472. If any dispute arises between the receiver and any such admiral, vice-admiral, lord of any manor, or other person as aforesaid as to the validity of his title to wreck, or if divers persons claim to be entitled to wreck found at the same place, the matter in dispute may be decided by two justices in the same manner in which disputes as to salvage coming within the jurisdiction of justices are hereinbefore directed to be determined. (See 25 and 26 Vict., cap. 63, sec. 52, *post.*)

Appeal from Decision of Justices.

473. If any party to such dispute is unwilling to refer the same to two justices, or, having so referred the same, is dissatisfied with their decision, he may within three months from the expiration of such year as aforesaid, or from the date of such decision as aforesaid, as the case may be, take such proceedings as he may be advised in any court of law, equity, or admiralty having jurisdiction in the matter, for establishing his title.

Power of the Board of Trade on behalf of the Crown to purchase Rights to Wreck.

474. The Board of Trade shall have power, with the consent of the Treasury, out of the revenue arising under the eighth part of this Act, for and on behalf of Her Majesty, her heirs and successors, to purchase all such rights to wreck as may be possessed by any person or body corporate, other than Her Majesty; and for the purpose of facilitating such purchases the provisions of the "Lands Clauses Consolidation Act, 1845," and the "Lands Clauses Consolidation (*Scotland*) Act, 1845," relating to the purchase of lands by agreement, shall be incorporated with this Act; and in the construction of this Act and the said incorporated Acts this Act shall be considered to be the "Special Act;" and any such rights to wreck as aforesaid shall be considered as an interest in land authorised to be taken by the Special Act, and Her Majesty, her heirs and successors, shall be considered as the promoters of the undertaking.

Unclaimed Wreck to be Sold.

475. If no owner establishes his claim to wreck found at any place before the expiration of such period of a year as aforesaid, and if no admiral, vice-admiral, lord of any manor, or person other than Her Majesty, her heirs and successors, is proved to be entitled to such wreck, the receiver shall forthwith sell the same, and after payment of all expenses attending such sale, and deducting therefrom his fees, and all expenses (if any, incurred by him, and paying to the salvors such amount of salvage as the Board of Trade may in each case or by any general rule determine, pay the same into the receipt of Her Majesty's Exchequer in such manner as the Treasury may direct, and the same shall be carried to and form part of the Consolidated Fund of the United Kingdom. (See also 25 and 26 Vict., cap. 63, sec. 53, *post.*)

JURISDICTION OF THE HIGH COURT OF ADMIRALTY.

High Court of Admiralty may decide on all Salvage Cases, whether on Sea or Land.

476. Subject to the provisions of this Act, the High Court of Admiralty shall have jurisdiction to decide upon all claims whatsoever relating to salvage, whether the services in respect of which salvage is claimed were performed upon the high seas, or within the body of any county, or partly in one place and partly in the other, and whether the wreck is found at sea or cast upon the land, or partly in the sea and partly on land.

OFFENCES IN RESPECT OF WRECK.

In case of Ship wrecked being Plundered by a tumultuous Assemblage, the Hundred to be liable for Damages.

477. Whenever any ship or boat is stranded or otherwise in distress on or near the shore of any sea or tidal water in the United Kingdom, and such ship or boat, or any part of the cargo or apparel thereof, is plundered, damaged, or destroyed by any persons riotously and tumultuously assembled together, whether on shore or afloat, full compensation shall be made to the owner of such boat, cargo, or apparel, as follows; (that is to say),

In *England* by the inhabitants of the hundred, wapentake, ward, or district in the nature of a hundred, by whatever name denominated, in or nearest to which the said offence is committed, in manner provided by an Act of the eighth year of the reign of King *George* the Fourth, chapter thirty-one, in case of the destruction of churches and other buildings by a riotous assemblage, or as near thereto as circumstances permit.

In *Ireland* by the inhabitants of the county, county of a city or town, barony, town or towns, parish or parishes, in or nearest to which such offence is committed, in manner provided by an Act of the fourth year of the reign of King *William* the Fourth, chapter thirty-seven, for the recovery of satisfaction and amends for the malicious demolition of or injury to churches, chapels, and other buildings used for religious worship, according to the usage of the United Church of *England* and *Ireland*, or as near thereto as circumstances permit.

In *Scotland* by the inhabitants of the county, city, or borough in or nearest to which such offence is commited, in manner provided by an Act of the first year of King *George* the First, statute two, chapter five, with respect to prosecutions for repairing the damages of any churches and other buildings, or as near thereto as circumstances permit.

Penalty for plundering in Cases of Shipwreck, for obstructing the saving of shipwrecked Property, and for secreting the same.

478. Every person who does any of the following acts (that is to say),

(1.) Wrongfully carries away or removes any part of any ship or boat stranded, or in danger of being stranded, or otherwise in distress, on or near the shore of any sea or tidal water, or any part of the cargo or apparel, or wreck; or

(2). Endeavours in any way to impede or hinder the saving of such ship, boat, cargo, apparel, or wreck; or

(3.) Secretes any wreck, or obliterates or defaces any marks thereon;

Shall, in addition to any other penalty or punishment he may be subject to under this or any other Act or law, for each such offence incur a penalty not exceeding fifty pounds; and every person, not being a receiver or a person hereinbefore authorised to take the command in cases of ships being stranded or in distress, or not acting under the orders of such receiver or person, who, without the leave of the master, endeavours to

board any such ship or boat as aforesaid, shall for each offence incur a penalty not exceeding fifty pounds; and it shall be lawful for the master of such ship or boat to repel by force any such person so attempting to board the same.

Penalty for selling Wreck in Foreign Ports.

479. If any person takes into any foreign port or place any ship or boat stranded, derelict, or otherwise in distress on or near the shore of the sea or of any tidal water situate within the limits of the United Kingdom, or any part of the cargo or apparel thereof, or anything belonging thereto, or any wreck found within such limits as aforesaid, and there sells the same, he shall be guilty of felony, and be subject to penal servitude for a term not exceeding four years.

DEALERS IN MARINE STORES AND MANUFACTURERS OF ANCHORS.

Regulations to be observed by Dealers in Marine Stores.

480. Every person dealing in buying and selling anchors, cables, sails, or old junk, old iron, or marine stores of any description, shall conform to the following regulations; (that is to say),

(1.) He shall have his name, together with the words "Dealer in Marine Stores," painted distinctly in letters of not less than six inches in length on every warehouse or other place of deposit belonging to him;

If he does not, he shall incur a penalty not exceeding twenty pounds.

(2.) He shall keep a book, or books, fairly written, and shall enter therein an account of all such marine stores as he may from time to time become possessed of, stating, in respect of each article, the time at which and the person from whom he purchased or received the same, adding, in the case of every such last-mentioned person, a description of his business and place of abode;

If he does not, he shall incur for the first offence a penalty not exceeding twenty pounds, and for every subsequent offence a penalty not exceeding fifty pounds.

(3.) He shall not, by himself or his agents, purchase marine stores of any description from any person apparently under the age of sixteen years;

If he does so, he shall incur for the first offence a penalty not exceeding five pounds, and for every subsequent offence a penalty not exceeding twenty pounds.

(4.) He shall not cut up any cable, or any similar article, exceeding five fathoms in length, or unlay the same into twine or paper stuff, on any pretence whatever, without obtaining such permit and publishing such notice of his having so obtained the same as is hereinafter mentioned;

If he does so, he shall incur for the first offence a penalty not exceeding twenty pounds, and for every subsequent offence a penalty not exceeding fifty pounds.

Manner of obtaining Permit to cut up Cables.

481. In order to obtain such permit as aforesaid, a dealer in marine stores shall make a declaration before some justice of the peace having jurisdiction over the place where such dealer resides, containing the following particulars; (that is to say),

(1.) A statement of the quality and description of the cable or other like article about to be cut up or unlaid.

(2.) A statement that he purchased or otherwise acquired the same *bonâ fide* and without fraud, and without any knowledge or suspicion that the same had been come by dishonestly.

(3.) A statement of the name and description of the person from whom he purchased or received the same.

And it shall be lawful for the justice before whom any such declaration is made, or for the receiver of the district in which such dealer in marine stores resides, upon the production of any such declaration as aforesaid, to grant a permit authorising him to cut up or unlay such cable or other like article.

Permit to be Advertised before Dealer proceeds to Act thereon.

482. No dealer in marine stores who has obtained such permit as aforesaid, shall proceed by virtue thereof to cut up or unlay any cable or other like article, until he has, for the space of one week at the least, before doing any such act, published in some newspaper published nearest to the place where he resides, one or more advertisements notifying the fact of his having so obtained a permit, and specifying the nature of the cable or other article mentioned in the permit, and the place where the same is deposited, and the time at which the same is intended to be so cut up or unlaid; and if any person suspects or believes that such cable or other article is his property, he may apply to any justice of the peace for a warrant; and such justice of the peace may, on the applicant making oath, or, if a person entitled to make an affirmation, making an affirmation in support of such his suspicion or belief, grant a warrant by virtue whereof the applicant shall be entitled to require the production by such dealer as aforesaid of the cable or other article mentioned in the permit, and also of the book of entries hereinbefore directed to be kept by every dealer in marine stores; and, upon such cable or other article and book of entries being produced, to inspect and examine the same; and if any dealer in marine stores makes default in complying with any of the provisions of this section, he shall, for the first offence, incur a penalty not exceeding twenty pounds, and for every subsequent offence a penalty not exceeding fifty pounds.

Manufacturers to place Marks on Anchors.

483. Every manufacturer of anchors shall, in case of each anchor which he manufactures, mark in legible characters on the crown, and also on the shank under the stock, his name or initials, with the addition of a progressive number, and the weight of such anchor; and, if he makes default in doing so, he shall, for each offence, incur a penalty not exceeding five pounds.

SALVAGE BY HER MAJESTY'S SHIPS.

No Claim for Salvage Services to be allowed in respect of Loss or Risk of Her Majesty's Ships or Property.

484. In cases where salvage services are rendered by any ship belonging to Her Majesty, or by the commander or crew thereof, no claim shall be made or allowed for any loss, damage, or risk thereby caused to such ship, or to the stores, tackle, or furniture thereof, or for the use of any stores or other articles belonging to Her Majesty, supplied in order to effect such services, or for any other expenses or loss sustained by Her Majesty by reason of such services.

Claims for Salvage by Her Majesty's Officers not to be determined without Consent of Admiralty.

485. No claim whatever on account of any salvage services rendered to any ship or cargo, or to any appurtenances of any ship, by the commander, or crew, or part of the crew, of any of Her Majesty's ships, shall be finally adjudicated upon, unless the consent of the Admiralty has first been obtained, such consent to be signified by writing under the hand of the Secretary to the Admiralty; and if any person who has originated proceedings in respect of any such claim fails to prove such consent to the satisfaction of the court, his suit shall stand dismissed, and he shall pay all the costs of such proceedings; provided that any document purporting to give such consent, and to be signed by the Secretary to the Admiralty, shall be *primâ facie* evidence of such consent having been given.

Steps to be taken when Salvage Services have been rendered by Her Majesty's Ships abroad.

486. Whenever services for which salvage is claimed are rendered to any ship or cargo, or to any part of any ship or cargo, or to any appurtenances of any ship, at any place out of the United Kingdom, and the four seas adjoining thereto, by the commander, or crew, or part of the crew, of any of Her Majesty's ships, the property alleged to be salved shall, if the salvor is justified by the circumstances of the case in detaining it at all, be taken to some port where there is either a consular officer or a Vice-Admiralty Court; and, within twenty-four hours after arriving at such port, the said salvor and the master or other person in charge of the property alleged to be salved shall each deliver to the consular officer or vice-admiralty judge there a statement verified on oath, specifying, so far as they respectively can, and so far as the particulars required apply to the case,

(1.) The place, condition, and circumstances in which the said ship, cargo, or property, was at the time when the services were rendered for which salvage is claimed.

(2.) The nature and duration of the services rendered.

And the salvor shall add to his statement,

(3.) The proportion of the value of the said ship, cargo, and property and of the freight which he claims for salvage, or the values at which he estimates the said ship, freight, cargo, and property re-

spectively, and the several amounts that he claims for salvage in respect of the same.

(4.) Any other circumstances he thinks relevant to the said claim.

And the said master or other person in charge of the said ship, cargo, or property shall add to his statement,

(5.) A copy of the certificate of registry of the said ship, and of the endorsements thereon, stating any change which (to his knowledge or belief) has occurred in the particulars contained in such certificate; and stating also, to the best of his knowledge and belief, the state of the title to the ship for the time being, and of the incumbrances and certificate of mortgage or sale, if any, affecting the same, and the names and places of business of the owners and incumbrancers;

(6.) The name and place of business or residence of the freighter (if any) of the said ship, and the freight to be paid for the voyage she is then on.

(7.) A general account of the quantity and nature of the cargo at the time the salvage services were rendered.

(8.) The name and place of business or residence of the owner of such cargo and of the consignee thereof.

(9.) The values at which the said master estimates the said ship, cargo, and property, and the freight respectively, or, if he thinks fit, in lieu of such estimated value of the cargo, a copy of the ship's manifest.

(10.) The amounts which the master thinks should be paid as salvage for the services rendered.

(11.) An accurate list of the property saved, in cases where the ship is not saved.

(12.) An account of the proceeds of the sale of the said ship, cargo, or property, in cases where the same or any of them are sold at such port as aforesaid.

(13.) The number, capacities, and condition of the crew of the said ship at the time the said services were rendered.

(14.) Any other circumstances he thinks relevant to the matters in question.

(15.) A statement of his willingness to execute a bond, in the form in the Table marked W. in the Schedule hereto, to such amount as the said consular officer on vice-admiralty judge may fix.

Consular Officer or Judge to fix Amount for which a Bond is to be given.

487. The said consular officer or judge, as the case may be, shall, within four days after receiving the aforesaid statements, fix the amount to be inserted in the said bond at such sum as he thinks sufficient to answer the demand for the salvage services rendered; but such sum shall not exceed one-half of the value which in his estimation the said ship, freight, and cargo, or any parts thereof in respect of which salvage is claimed, are worth; and the said consular officer or judge may, if either of the aforesaid statements is not delivered to him within the time hereby required, proceed *ex parte*, but he shall in no case under this Act require the cargo to be unladen; and the said consular officer may in any proceeding under this Act relating to salvage take affidavits and receive affirmations.

On Master executing Bond, the Right of Detention to cease.

488. The said consular officer or judge shall send notice of the sum which he has so fixed as aforesaid to the said salvor and the said master; and upon such master executing a bond in such form as aforesaid, with the said sum inserted therein, in the presence of the said officer or judge (who shall attest the same), and delivering the same to the said salvor, the right of the said salvor to detain or retain possession of the said ship, cargo, or property, or any of them, in respect of the said salvage claim, shall cease.

Provision for Additional Security in the Case of Ships owned by Persons resident out of Her Majesty's Dominions.

489. If the ship, cargo, or property in respect of which the claim for salvage is made is not owned by persons domiciled in Her Majesty's dominions, the right of the salvor to detain or retain possession thereof shall not cease unless the master procures, in addition to the said bond, such security for the due performance of the conditions thereof as the said officer or judge considers sufficient for the purpose, and places the same in the possession or custody of the said officer or judge, or, if the salvor so desires, in the possession or custody of the said officer or judge jointly with any other person whom the said salvor appoints for the purpose.

Documents to be sent to England.

490. The said consular officer or judge shall at the earliest opportunity, transmit the said statements and documents so sent to him as aforesaid, and a notice of the sum he has so fixed as aforesaid, to the High Court of Admiralty of *England*, or if the said salvor and the said master or other person in charge as aforesaid agree that the said bond shall be adjudicated upon by any Vice-Admiralty Court, to such court.

Whom the Bond shall bind.

491. The said bond shall bind the respective owners of the said ship, freight and cargo, and their respective heirs, executors, and administrators, for the salvage adjudged to be payable in respect of the said ship, freight, and cargo respectively.

Court in which it is to be adjudicated on.

492. The said bond shall be adjudicated on and enforced by the High Court of Admiralty in *England*, or if the said salvor and master at the time of the execution of the said bond agree upon any Vice-Admiralty Court, then by such Vice-Admiralty Court; and any such Vice-Admiralty Court may in every proceeding under this Act have and exercise all powers and authorities whatsoever which the said High Court of Admiralty now has or at any time may have in any proceeding whatsoever before it; and in cases where any security for the due performance of the conditions of the said bond has been placed in the possession or custody of the said consular officer or vice-admiralty judge or of such officer or judge jointly with any other person, the person or persons having the custody of such security shall respectively deal with the same in such manner as the court that adjudicates on the bond directs.

Power of High Court of Admiralty to enforce Bonds.

493. The said High Court of Admiralty shall have power to enforce any bond given in pursuance of this Act in any Vice-Admiralty Court in any part of Her Majesty's dominions; and all courts in *Scotland*, *Ireland*, and the islands of *Jersey*, *Guernsey*, *Alderney*, *Sark*, and *Man* exercising Admiralty jurisdiction shall, upon application, aid and assist the High Court of Admiralty in enforcing the said bonds.

Saving Clause.

494. Any such salvor as aforesaid of any ship, cargo, or property who elects not to proceed under this Act shall have no power to detain the said ship, cargo, or property, but may proceed otherwise for the enforcement of his salvage claim as if this Act had not been passed; and nothing in this Act contained shall abridge or affect the rights of salvors, except in the cases by it provided for.

Documents free from Duty.

495. All bonds, statements, agreements, and other documents made or executed in pursuance of the eighth part of this Act shall, if so made or executed out of the United Kingdom, be exempt from stamp duty.

Punishment for Forgery and False Representations.

496. Every person who, in any proceeding under provisions contained in the eight part of this Act relating to salvage by Her Majesty's ships, forges, assists in forging, or procures to be forged, fraudulently alters, assists in fraudulently altering, or procures to be fraudulently altered, any document, and every person who in any such proceeding puts off or makes use of any such forged or altered document, knowing the same to be so forged or altered, or who in any such proceeding gives or makes, or assists in giving or making, or procures to be given or made, any false evidence or representation, knowing the same to be false, shall be punishable with imprisonment, with or without hard labour, for any period not exceeding two years, or if summarily prosecuted and convicted, by imprisonment, with or without hard labour, for any period not exceeding six months.

SALVAGE (GENERAL).

Voluntary Agreement may be made which shall have the same effect as the Bond above mentioned.

497. Whenever services for which salvage is claimed are rendered either by the commander or crew or part of the crew of any of Her Majesty's ships, or of any other ship, and the salvor voluntarily agrees to abandon his lien upon the ship, cargo and property alleged to be salved, upon the master or other person in charge thereof entering into a written agreement attested by two witnesses to abide the decision of the said High Court of Admiralty or of any Vice-Admiralty Court, and thereby giving security in that behalf to such amount as may be agreed on by the parties to the said agreement, such agreement shall bind the said ship and the said cargo and the freight payable therefor respectively, and the respective owners of the

said ship, freight, and cargo for the time being, and their respective heirs, executors, and administrators, for the salvage which may be adjudged to be payable in respect of the said ship, cargo, and freight respectively to the extent of the security so given as aforesaid, and may be adjudicated upon and enforced in the same manner as the bonds provided for by the eighth part of this Act, in the case of detention for salvage services rendered by Her Majesty's ships; and upon such agreement being made, the salvor and the master or other person in charge as aforesaid shall respectively make such statements as are hereinbefore required to be made by them in case of a bond being given, except that such statements need not be made upon oath; and the salvor shall, as soon as practicable, transmit the said agreement and the said statements to the court in which the said agreement is to be adjudicated upon.

Powers for Courts having Admiralty Jurisdiction to apportion Salvage.

498. Whenever the aggregate amount of salvage payable in respect of salvage services rendered in the United Kingdom has been finally ascertained, and exceeds two hundred pounds, and whenever the aggregate amount of salvage payable in respect of salvage services rendered elsewhere has been finally ascertained, whatever such amount may be, then if any delay or dispute arises as to the apportionment thereof, any court having admiralty jurisdiction may cause the same to be apportioned amongst the persons entitled thereto in such manner as it thinks just; and may for that purpose, if it thinks fit, appoint any person to carry such apportionment into effect, and may compel any person in whose hands or under whose control such amount may be to distribute the same, or to bring the same into court, to be there dealt with as the court may direct, and may for the purposes aforesaid issue such monitions or other processes as it thinks fit.

MISCELLANEOUS.

(As to signals of distress, see 36 and 37 Vict., cap. 85, secs. 18, 20, and 21, Schedule I., *post.*)

Foreign Goods found derelict to be subject to the same Duties as on Importation.

499. All wreck, being foreign goods brought or coming into the United Kingdom or the *Isle of Man*, shall be subject to the same duties as if the same were imported into the United Kingdom or the *Isle of Man* respectively; and if any question arises as to the origin of such goods, they shall be deemed to be the produce of such country as the Commissioners of Customs may upon investigation determine.

Goods saved from Ships wrecked to be forwarded to the Ports of their original destination.

500. The Commissioners of Customs and Excise shall permit all goods, wares, and merchandise saved from any ship stranded or wrecked on its homeward voyage to be forwarded to the port of its original destination, and all goods, wares, and merchandise saved from any ship stranded or

wrecked on its outward voyage to be returned to the port at which the same were shipped, but such commissioners are to take security for the due protection of the revenue in respect of such goods, wares, and merchandise.

Provision as to certain Terms in Scotland.

501. All matters and things that may in pursuance of the eighth part of this Act be done by or to any justice or any two justices, may in *Scotland* be done also by or to the sheriff of the county, including the sheriff-substitute; and the expression "Lord or Lady of a manor" shall in the eighth part of this Act, so far as regards *Scotland*, include "heritable proprietor duly infeft." See sections 19 and 20 of 18 and 19 Vict., cap. 96, and sections 49–53 of 25 and 26 Vict., cap. 63.

PART IX.

LIABILITY OF SHIPOWNERS.

502. The ninth part of this Act shall apply to the whole of Her Majesty's dominions.

LIMITATION OF LIABILITY.

Owner not liable in respect of certain Articles.

503. No owner of any sea-going ship or share therein shall be liable to make good any loss or damage that may happen without his actual fault or privity of or to any of the following things; (that is to say),

(1.) Of or to any goods, merchandise, or other things whatsoever taken in or put on board any such ship, by reason of any fire happening on board such ship;

(2.) Of or to any gold, silver, diamonds, watches, jewels, or precious stones taken in or put on board any such ship, by reason of any robbery, embezzlement, making away with or secreting thereof, unless the owner or shipper thereof has, at the time of shipping the same, inserted in his bills of lading or otherwise declared in writing to the master or owner of such ship the true nature and value of such articles;

To any extent whatever.

504, 505. Repealed. (See sections 54, 55 and 56 of 25 and 26 Vict., cap. 63, *post.*)

Provision for separate Losses.

506. The owner of every sea-going ship or share therein shall be liable in respect of every such loss of life, personal injury, loss of or damage to goods as aforesaid arising on distinct occasions to the same extent as if no other loss, injury, or damage had arisen. (See section 56 of 25 and 26 Vict., cap. 63, *post.*)

MODE OF PROCEDURE.

In case of Loss of Life or Personal Injury, Board of Trade may direct Proceedings.

507. Whenever any such liability as aforesaid has been or is alleged to have been incurred in respect of loss of life or personal injury, the Board of Trade may, in its discretion, after giving not less than three days' notice by post or otherwise to the party to be made defendant or defender, by warrant sealed with the seal of such Board or signed by one of its secretaries or assistant secretaries, require the sheriff having jurisdiction over any place in the United Kingdom to summon a jury at a time and place to be specified in such warrant for the purpose of determining the following question; (that is to say),

The number, names, and descriptions of all persons killed or injured by reason of any wrongful act, neglect, or default.

And upon the receipt of such warrant the sheriff shall summon a jury of twenty-four indifferent persons, duly qualified to act as common jurymen in the superior courts, to meet at such time and place as aforesaid.

Either Party may require Question to be tried by a Special Jury.

508. If either party to the inquiry desire any such question as aforesaid to be tried before a special jury, such question shall be so tried, provided that notice of such desire, if coming from the other party, is given to the Board of Trade before it has issued its warrant to the sheriff; and for that purpose the Board of Trade shall, by its warrant to the sheriff, require him to nominate a special jury for such trial; and thereupon the sheriff shall, as soon as conveniently may be after the receipt by him of such warrant, summon both the parties to appear before him by themselves or their attorneys or agents at some convenient time and place appointed by him for the purpose of nominating a special jury; and at the place and time so appointed the sheriff shall proceed to nominate and strike a special jury in the manner in which such juries are required by the laws for the time being in force to be nominated or struck by the proper officers of the superior courts; and the sheriff shall appoint a day, and shall on the day so appointed proceed to reduce the said special jury to the number of twenty, in the manner used and accustomed by the proper officers of the superior courts.

Provisions for Conduct of Proceedings.

509. The following provisions shall be applicable to the conduct of proceedings by the Board of Trade; (that is to say),

(1.) The sheriff shall preside at such inquiry, and the Board of Trade shall be deemed in *England* and *Ireland* to be the plaintiff, and in *Scotland*, the pursuer, both of which terms are hereinafter included in the term plaintiff, with power to appoint any agent to act on its behalf, and shall have all such right and privileges as the plaintiff is entitled to in actions at law; and the owner or owners of the ship or ships by whom such liability as last-aforesaid is alleged to have been incurred shall be deemed in *England* and *Ireland* to be

the defendant, and in *Scotland* the defender, both of which terms are hereinafter included in the term defendant.

(2.) Not less than ten days' notice of the time and place of the inquiry shall be served by the Board of Trade on the defendant.

(3.) Service on the master of any ship shall be deemed good service on the owner thereof, and the master shall, in respect of the proceedings on such inquiry, be deemed the agent and representative of the owner, with power to appear for him on such inquiry, and to do all matters and things which he might himself have done.

(4.) If the defendant does not appear at the time of such inquiry, the same shall be proceeded with as if he had appeared, upon due proof of service of notice having been made on him in pursuance of this Act.

(5.) The impannelling of the jury and the summoning and attendance of witnesses shall be conducted and enforced in *England* and *Ireland* in manner provided by the Lands Clauses Consolidation Act, 1845, in cases of disputed compensation as to land, and in *Scotland* in manner provided by the Lands Clauses Consolidation (*Scotland*) Act, 1845, in like cases, or as near thereto as circumstances permit; and all provisions in the said Acts having reference to cases where any question of disputed compensation requires to be determined by the verdict of a jury shall, with the requisite alterations, be considered as incorporated with this Act, and to have reference to cases where the question of the liability of any owner in respect of any such accident as aforesaid requires to be determined by the verdict of a jury.

(6.) In *England* and *Ireland* the sheriff shall, if the Board of Trade so requires, or if the defendant so requires and the Board of Trade consents thereto, appoint as assessor a barrister-at-law of competent knowledge and standing.

(7.) The costs incurred by all parties in and incidental to any such inquiry as aforesaid shall in *England* and *Ireland* be taxed by the master of one of Her Majesty's Superior Courts of Common Law as between attorney and client, and in *Scotland* by the auditor of the Court of Session as between agent and client; and shall, if the verdict in any inquiry is in favour of the plaintiff, be paid by the defendant, but if such verdict is in favour of the defendant, be paid by the Board of Trade out of the Mercantile Marine fund.

(8.) The payment of all damages and costs in any such inquiry as aforesaid shall, upon application made to such superior court as aforesaid by the party entitled thereto, be enforced by rule or order of such court or a judge thereof, or otherwise as such court or judge thinks fit.

(9.) The Board of Trade may make any compromise it thinks fit as to the damages payable in respect of personal injury, or of the death of any person; and any damages received in pursuance of such compromise shall, so far as the same extend, be applied in the same manner and be subject to the same rules as if the same were damages recovered on an inquiry instituted by the Board of Trade.

Rules as to Damages and Application thereof.

510. The following rules shall be observed as to the damages recovered in any such inquiry, and the application thereof; (that is to say),

(1.) The damages payable in each case of death or injury shall be assessed at thirty pounds.

(2.) The damages found due on any such inquiry as aforesaid shall be the first charge on the aggregate amount for which the owner is liable, and shall be paid thereout in priority to all other claims.

(3.) All such damages as aforesaid shall be paid to Her Majesty's Paymaster-General, and shall be distributed and dealt with by him in such manner as the Board of Trade directs; and in directing such distribution the Board of Trade shall have power in the first place to deduct or retain any costs incidental thereto; and in the next place, as regards the sum paid in respect of injuries, shall direct payment to each person injured of such compensation, not exceeding in any case the statutory amount, as the said Board thinks fit; and as regards the sum paid in respect of deaths, shall direct payment thereof for the benefit of the husband, wife, parent, and child of the deceased, or any of them, in such shares, upon such evidence, and in such manner as the said Board thinks fit.

(4.) The Board of Trade shall refund to the owner any surplus remaining under its control after making such distribution as aforesaid, and the sum so refunded shall form part of the residue hereinafter mentioned.

(5.) The Board of Trade shall not, nor shall any person acting under it, be liable to any action, suit, account, claim or demand whatsoever for or in respect of any act or matter done, or omitted to be done, in the distribution of such damages as aforesaid.

(6.) If the amount paid to Her Majesty's Paymaster-General in manner aforesaid is insufficient to meet the demands upon it, the several claims thereon shall abate proportionally.

Any Person who is Dissatisfied with the Amount of Statutory Damages may bring an Action on his own Account.

511. After the completion of such inquiry as aforesaid, if any person injured estimates the damages payable in respect of such injury, or if the executor or administrator of any deceased person estimates the damages payable in respect of his death, at a greater sum than such statutory amount, or, in case of a compromise having been made by the Board of Trade, than the amount accepted by such Board by way of compensation for such injury or death as aforesaid, the persons so estimating the same shall, upon repaying or obtaining the repayment by the Board of Trade to the owner of the amount paid by him to the Board of Trade in respect of such injury or death, be at liberty to bring an action for the recovery of damages in the same manner as if no power of instituting an inquiry had hereinbefore been given to the Board of Trade, subject to the following proviso (that is to say), that any damages recoverable by such person shall be payable only out of the residue, if any, of the aggregate amount for which the owner is liable, after deducting all sums paid to Her

Majesty's Paymaster-General in manner aforesaid; and if the damages recovered in such action do not exceed double the statutory amount, such person shall pay to the defendant in such action all the costs thereof, such costs to be taxed in *England* and *Ireland* as between attorney and client, and in *Scotland* as between agent and client.

If Board of Trade decline to institute Proceedings, Individuals may bring Actions.

512. In cases where loss of life or personal injury has occurred by any accident in respect of which the owner of any such ship as aforesaid is or is alleged to be liable in damages, no person shall be entitled to bring any action, or institute any suit or other legal proceeding in the United Kingdom, until the completion of the inquiry (if any) instituted by the Board of Trade, or until the Board of Trade has refused to institute the same; and the Board of Trade shall, for the purpose of entitling any person to bring an action or institute a suit or other legal proceeding, be deemed to have refused to institute such inquiry whenever notice has been served on it by any person of his desire to bring such action or institute such suit or other legal proceeding, and no inquiry is instituted by the Board of Trade in respect of the subject-matter of such intended action, suit, or proceeding for the space of one month after the service of such notice.

Proceedings by Board of Trade after Refusal.

513. Whenever the Board of Trade, having refused in manner aforesaid to institute any inquiry, afterwards determines to institute the same, the damages and costs (if any) recovered on such inquiry shall be payable rateably with, and not in priority to, the costs and damages recovered in any other action, suit, or legal proceeding.

Proceedings in case of several Claims being made on Owners of Ship.

514. In cases where any liability has been or is alleged to have been incurred by any owner in respect of loss of life, personal injury, or loss of or damage to ships, boats, or goods, and several claims are made or apprehended in respect of such liability, then, subject to the right hereinbefore given to the Board of Trade of recovering damages in the United Kingdom in respect of loss of life or personal injury, it shall be lawful in *England* or *Ireland* for the High Court of Chancery, and in *Scotland* for the Court of Session, and in any *British* possession for any competent court, to entertain proceedings at the suit of any owner for the purpose of determining the amount of such liability subject as aforesaid, and for the distribution of such amount rateably amongst the several claimants, with power for any such court to stop all actions and suits pending in any other court in relation to the same subject-matter; and any proceeding entertained by such Court of Chancery or Court of Session, or other competent court, may be conducted in such manner and subject to such regulations as to making any persons interested parties to the same, and as to the exclusion of any claimants who do not come in within a certain time, and as to requiring security from the owner, and as to payment of costs, as the court thinks just.

Money paid for Damage, how to be accounted for between Part Owners.

515. All sums of money paid for or on account of any loss or damage in respect whereof the liability of the owners of any ship is limited by the ninth part of this Act, and all costs incurred in relation thereto, may be brought into account among part owners of the same ship in the same manner as money disbursed for the use thereof.

Saving Clause.

516. Nothing in the ninth part of this Act contained shall be construed—

To lessen or take away any liability to which any master or seaman, being also owner or part owner of the ship to which he belongs, is subject in his capacity of master or seaman; or,

To extend to any *British* ship not being a recognised *British* ship within the meaning of this Act.

PART X.

LEGAL PROCEDURE.

517. The tenth part of this Act shall in all cases, where no particular country is mentioned, apply to the whole of Her Majesty's dominions.

LEGAL PROCEDURE (GENERAL).

518. In all places within Her Majesty's dominions, except *Scotland*, the offences hereinafter mentioned shall be punished and penalties recovered in manner following; (that is to say),

Punishment of Offences and Recovery of Penalties.

(1.) Every offence by this Act declared to be a misdemeanour shall be punishable by fine or imprisonment, with or without hard labour; and the court before which such offence is tried may in *England* make the same allowances and order payment of the same costs and expenses as if such misdemeanour had been enumerated in the Act passed in the seventh year of His late Majesty King *George* the Fourth, chapter sixty-four, or any other Act that may be passed for the like purpose; and may in any other part of Her Majesty's dominions make such allowances and order payment of such costs and expenses (if any) as are payable or allowable upon the trial of any misdemeanour under any existing Act or ordinance, or as may be payable or allowable under any Act or law for the time being in force therein.

(2.) Every offence declared by this Act to be a misdemeanour shall also be deemed to be an offence hereby made punishable by imprisonment for any period not exceeding six months, with or without hard labour, or by a penalty not exceeding one hundred pounds, and may be prosecuted accordingly in a summary manner instead of being prosecuted as a misdemeanour.

(3.) Every offence hereby made punishable by imprisonment for any period not exceeding six months, with or without hard labour, or by any penalty not exceeding one hundred pounds, shall in *England* and *Ireland* be prosecuted summarily before any two or more justices, as to *England* in the manner directed by the Act of the eleventh and twelfth years of the reign of Her Majesty Queen *Victoria*, chapter forty-three, and as to *Ireland* in the manner directed by the Act of the fourteenth and fifteenth years of the reign of Her Majesty Queen *Victoria*, chapter ninety-three, or in such other manner as may be directed by any Act or Acts that may be passed for like purposes: And all provisions contained in the said Acts shall be applicable to such prosecutions in the same manner as if the offences in respect of which the same are instituted were hereby stated to be offences in respect of which two or more justices have power to convict summarily or to make a summary order.

(4.) In all cases of summary convictions in *England*, where the sum adjudged to be paid exceeds five pounds, or the period of imprisonment adjudged exceeds one month, any person who thinks himself aggrieved by such conviction may appeal to the next court of general or quarter sessions which is holden not less than twelve days after the day of such conviction for the county, city, borough, liberty, riding, division, or place wherein the case has been tried; provided that such person shall give to the complainant a notice in writing of such appeal, and of the cause and matter thereof, within three days after such conviction, and seven clear days at the least before such sessions, and shall also either remain in custody until the sessions, or enter into a recognisance, with two sufficient sureties, before a justice of the peace, conditioned personally to appear at the said sessions, and to try such appeal, and to abide the judgment of the court thereupon, and to pay such costs as shall be by the court awarded; and upon such notice being given, and such recognisance being entered into, the justice before whom the same shall be entered into shall liberate such person, if in custody; and the court at such sessions shall hear and determine the matter of the appeal, and shall make such order therein, with or without costs to either party, as to the court shall seem meet; and in case of the dismissal of the appeal, or the affirmance of the conviction, shall order and adjudge the offender to be punished according to the conviction, and to pay such costs as may be awarded, and shall, if necessary, issue process for enforcing such judgment.

(5.) All offences under this Act shall in any *British* possession be punishable in any court or by any justice of the peace or magistrate in which or by whom offences of a like character are ordinarily punishable, or in such other manner, or by such other courts, justices, or magistrates, as may from time to time be determined by any Act or ordinance duly made in such possession in such manner as Acts and ordinances in such possession are required to be made in order to have the force of law. (See section 21 of 18 and 19 Vict., cap. 91, *post.*)

Stipendiary Magistrate to have same Power as Two Justices.

519. Any stipendiary magistrate shall have full power to do alone whatever two justices of the peace are by this Act authorised to do.

Offence where deemed to have been committed.

520. For the purpose of giving jurisdiction under this Act, every offence shall be deemed to have been committed, and every cause of complaint to have arisen, either in the place in which the same actually was committed or arose, or in any place in which the offender or person complained against may be.

Jurisdiction over Ships lying off the Coasts.

521. In all cases where any district within which any court or justice of the peace or other magistrate has jurisdiction either under this Act or under any other Act or at common law, for any purpose whatever, is situate on the coast of any sea, or abutting on or projecting into any bay, channel, lake, river, or other navigable water, every such court, justice of the peace, or magistrate shall have jurisdiction over any ship or boat being on or lying or passing off such coast, or being in or near such bay, channel, lake, river, or navigable water as aforesaid, and over all persons on board such ship or boat, or for the time being belonging thereto, in the same manner as if such ship, boat, or persons were within the limits of the original jurisdiction of such court, justice, or magistrate. (See 18 and 19 Vict., cap. 91, sec. 21, and 30 and 31 Vict., cap. 124, sec. 11, *post.*)

Service to be good if made Personally or on Board Ship.

522. Service of any summons or other matter in any legal proceeding under this Act shall be good service, if made personally on the person to be served, or at his last place of abode, or if made by leaving such summons for him on board any ship to which he may belong with the person being or appearing to be in command or charge of such ship.

Sums ordered to be Paid leviable by Distress on Ship.

523. In all cases where any court, justice or justices of the peace, or other magistrate, has or have power to make an order directing payment to be made of any seaman's wages, penalties, or other sums of money, then, if the party so directed to pay the same is the master or owner of a ship, and the same is not paid at the time and in manner prescribed in the order, the court, justice or justices, or other magistrate who made the order, may, in addition to any other powers they or he may have for the purpose of compelling payment, direct the amount remaining unpaid to be levied by distress or pounding and sale of the said ship, her tackle, furniture, and apparel.

Application of Penalties.

524. Any court, justice, or magistrate imposing any penalty under this Act, for which no specific application is herein provided, may, if it

or he thinks fit, direct the whole or any part thereof to be applied in compensating any person for any wrong or damage which he may have sustained by the act or default in respect of which such penalty is imposed, or to be applied in or towards payment of the expenses of the proceedings; and, subject to such directions or specific application as aforesaid, all penalties recovered in the United Kingdom shall be paid into the receipt of Her Majesty's Exchequer in such manner as the Treasury may direct, and shall be carried to and form part of the Consolidated Fund of the United Kingdom; and all penalties recovered in any *British* possession shall be paid over into the public treasury of such possession, and form part of the public revenue thereof.

Limitation of Time in Summary Proceedings.

525. The time for instituting summary proceedings under this Act shall be limited as follows; (that is to say),

(1.) No conviction for any offence shall be made under this Act in any summary proceeding instituted in the United Kingdom, unless such proceeding is commenced within six months after the commission of the offence; or if both or either of the parties to such proceeding happen during such time to be out of the United Kingdom, unless the same is commenced within two months after they both first happen to arrive or to be at one time within the same.

(2.) No conviction for any offence shall be made under this Act in any proceeding instituted in any *British* possession, unless such proceeding is commenced within six months after the commission of the offence; or if both or either of the parties to the proceeding happen during such time not to be within the jurisdiction of any court capable of dealing with the case, unless the same is commenced within two months after they both first happen to arrive, or to be at one time within such jurisdiction.

(3.) No order for the payment of money shall be made under this Act in any summary proceeding instituted in the United Kingdom, unless such proceeding is commenced within six months after the cause of complaint arises; or, if both or either of the parties happen during such time to be out of the United Kingdom, unless the same is commenced within six months after they both first happen to arrive or to be at one time within the same.

(4.) No order for the payment of money shall be made under this Act in any summary proceeding instituted in any *British* possession, unless such proceeding is commenced within six months after the cause of complaint arises; or, if both or either of the parties to the proceeding happen during such time not to be within the jurisdiction of any court capable of dealing with the case, unless the same is commenced within six months after they both first happen to arrive or be at one time within such jurisdiction.

And no provision contained in any other Act or Acts, ordinance or ordinances, for limiting the time within which summary proceedings may be instituted, shall affect any summary proceeding under this Act.

Document proved without calling Attesting Witness.

526. Any document required by this Act to be executed in the presence of or to be attested by any witness or witnesses, may be proved by the evidence of any person who is able to bear witness to the requisite facts, without calling the attesting witness or witnesses, or any of them.

Power of Judge of Court of Record or Admiralty to arrest Foreign Ship that has occasioned Damage.

527. Whenever any injury has, in any part of the world, been caused to any property belonging to Her Majesty or to any of Her Majesty's subjects by any foreign ship, if at any time thereafter such ship is found in any port or river of the United Kingdom, or within three miles of the coast thereof, it shall be lawful for the judge of any court of record in the United Kingdom, or for the judge of the High Court of Admiralty, or in *Scotland* the Court of Session, or the sheriff of the county within whose jurisdiction such ship may be, upon its being shown to him by any person applying summarily that such injury was probably caused by the misconduct or want of skill of the master or mariners of such ship, to issue an order directed to any officer of customs or other officer named by such judge, requiring him to detain such ship until such time as the owner, master, or consignee thereof has made satisfaction in respect of such jury, or has given security, to be approved by the judge, to abide the event of any action, suit, or other legal proceeding that may be instituted in respect of such injury, and to pay all costs and damages that may be awarded thereon; and any officer of customs or other officer to whom such order is directed shall detain such ship accordingly.

Power in certain Cases to detain Ship before Application made to Judge.

528. In any case where it appears that before any application can be made under the foregoing section such foreign ship will have departed beyond the limits therein mentioned, it shall be lawful for any commissioned officer on full pay in the military or naval service of Her Majesty, or any *British* officer of customs, or any *British* consular officer, to detain such ship until such time as will allow such application to be made, and the result thereof to be communicated to him; and no such officer shall be liable for any costs or damages in respect of such detention, unless the same is proved to have been made without reasonable grounds.

Who to be Defendant to Suit in such Cases.

529. In an action, suit, or other proceeding in relation to such injury, the person so giving security as aforesaid shall be made defendant or defender, and shall be stated to be the owner of the ship that has occasioned such damage; and the production of the order of the judge made in relation to such security shall be conclusive evidence of the liability of such defendant or defender to such action, suit, or other proceeding. (See also 36 and 37 Vict., cap. 85, sec. 31, *post.*)

LEGAL PROCEDURE (SCOTLAND).

Offences punishable as Misdemeanours.

530. In *Scotland* every offence which by this Act is described as a felony or misdemeanour may be prosecuted by indictment or criminal letters at the instance of Her Majesty's Advocate before the High Court of Justiciary, or by criminal libel at the instance of the procurator-fiscal of the county before the sheriff, and shall be punishable with fine and with imprisonment, with or without hard labour, in default of payment, or with imprisonment, with or without hard labour, or with both, as the court may think fit, or in the case of felony with penal servitude, where the court is competent thereto; and such court may also, if it think fit, order payment by the offender of the costs and expenses of the prosecution.

Summary Proceedings.

531. In *Scotland* all prosecutions, complaints, actions, or proceedings under this Act, other than prosecutions for felonies or misdemeanours, may be brought in a summary form before the sheriff of the county, or before any two justices of the peace of the county or burgh where the cause of such prosecution or action arises, or where the offender or defender may be for the time, and when of a criminal nature, or for penalties, at the instance of the procurator-fiscal of court, or at the instance of any party aggrieved, with concurrence of the procurator-fiscal of court; and the court may, if it think fit, order payment by the offender or defender of the costs of the prosecution or action.

Form of Complaint.

532. In *Scotland*, all prosecutions, complaints, actions, or other proceedings under this Act may be brought either in a written or printed form, or partly written and partly printed, and where such proceedings are brought in a summary form, it shall not be necessary in the complaint to recite or set forth the clause or clauses of the Act on which such proceeding is founded, but it shall be sufficient to specify or refer to such clause or clauses, and to set forth shortly the cause of complaint or action, and the remedy sought; and when such complaint or action is brought in whole or in part for the enforcement of a pecuniary debt or demand, the complaint may contain a prayer for warrant to arrest upon the dependence.

Mode of requiring Appearance of Defender and Witnesses.

533. In *Scotland*, on any complaint or other proceeding brought in a summary form under this Act being presented to the sheriff-clerk or clerk of the peace, he shall grant warrant to cite the defender to appear personally before the said sheriff or justices of the peace on a day fixed, and at the same time shall appoint a copy of the same to be delivered to him by a sheriff-officer or constable, as the case may be, along with the citation;

and such deliverance shall also contain a warrant for citing witnesses and havers to compear at the same time and place to give evidence and produce such writs as may be specified in their citation: and where such warrant has been prayed for in the complaint or other proceeding, the deliverance of the sheriff-clerk or clerk of the peace shall also contain warrant to arrest upon the dependence in common form: Provided always, that where the apprehension of any party, with or without a warrant, is authorised by this Act, such party may be detained in custody until he can be brought at the earliest opportunity before any two justices, or the sheriff who may have jurisdiction in the place, to be dealt with as this Act directs, and no citation or induciæ shall in such case be necessary.

Backing Arrestments.

534. When it becomes necessary to execute such arrestment on the dependence against goods or effects of the defender within *Scotland*, but not locally situated within the jurisdiction of the sheriff or justices of the peace by whom the warrant to arrest has been granted, it shall be competent to carry the warrant into execution on its being endorsed by the sheriff-clerk or clerk of the peace of the county or burgh respectively within which such warrant comes to be executed.

Compelling Attendance of Witnesses.

535. In all proceedings under this Act in *Scotland* the sheriff or justices of the peace shall have the same power of compelling attendance of witnesses and havers as in cases falling under their ordinary jurisdiction.

Proceedings to be vivâ voce.

536. The whole procedure in cases brought in a summary form before the sheriff or justices of the peace in *Scotland* shall be conducted *vivâ voce* without written pleadings, and without taking down the evidence in writing, and no record shall be kept of the proceedings other than the complaint and the sentence or decree pronounced thereon.

Power to Adjourn.

537. It shall be in the power of the sheriff or justices of the peace in *Scotland* to adjourn the proceedings from time to time to any day or days to be fixed by them, in the event of absence of witnesses or of any other cause which shall appear to them to render such adjournment necessary.

Sentence to be in Writing. Imprisonment to be inflicted in default of Payment.

538. In *Scotland* all sentences and decrees to be pronounced by the sheriff or justices of the peace upon such summary complaints shall be in writing; and where there is a decree for payment of any sum or sums of money against a defender, such decree shall contain warrant for arrestment, poinding, and imprisonment in default of payment, such arrestment,

poinding, or imprisonment to be carried into effect by sheriff-officers or constables, as the case may be, in the same manner as in cases arising under the ordinary jurisdiction of the sheriff or justices: Provided always, that nothing herein contained shall be taken or construed to repeal or affect an Act of the fifth and sixth years of *William* the Fourth intituled *An Act for abolishing*, in Scotland, *Imprisonment for Civil Debts of small Amount.*

Sentence and Penalties in default of Defender's Appearance.

539. In all summary complaints and proceedings for recovery of any penalty or sum of money in *Scotland*, if a defender who has been duly cited shall not appear at the time and place required by the citation, he shall be held as confessed, and sentence or decree shall be pronounced against him in terms of the complaint, with such costs and expenses as to the court shall seem fit: Provided always, that he shall be entitled to obtain himself reponed against any such decree at any time before the same be fully implemented, by lodging with the clerk of court a reponing note, and consigning in his hands the sum decerned for, and the costs which had been awarded by the court, and on the same day delivering or transmitting through the post, to the pursuer or his agent, a copy of such reponing note; and a certificate by the clerk of court of such note having been lodged shall operate as a sist of diligence till the cause shall have been reheard and finally disposed of, which shall be on the next sitting of the court, or on any day to which the court shall then adjourn it.

Warrant to Apprehend in default of Appearance.

540. In all summary complaints or other proceedings not brought for the recovery of any penalty or sum of money in *Scotland*, if a defender, being duly cited, shall fail to appear, the sheriff or justices may grant warrant to apprehend and bring him before the court.

Backing Sentences or Decrees.

541. In all cases where sentences or decrees of the sheriff or justices require to be enforced within *Scotland*, but beyond the jurisdiction of the sheriff or justices by whom such sentences or decrees have been pronounced, it shall be competent to carry the same into execution upon the same being endorsed by the sheriff-clerk or clerk of the peace of the county or burgh within which such execution is to take place.

Orders not to be Quashed for want of Form; and to be Final.

542. No order, decree, or sentence pronounced by any sheriff or justice of the peace in *Scotland* under the authority of this Act shall be quashed or vacated for any misnomer, informality, or defect of form; and all orders, decrees, and sentences so pronounced shall be final and conclusive, and not subject to suspension, advocation, reduction, or to any form of review or stay of execution, except on the ground of corruption or malice on the part

of the sheriff or justices, in which case the suspension, advocation, or reduction must be brought within fourteen days of the date of the order, decree, or sentence complained of: Provided always, that no stay of execution shall be competent to the effect of preventing immediate execution of such order, decree, or sentence.

General Rules, so far as applicable, to extend to Penalties and Proceedings in Scotland.

543. Such of the general provisions with respect to jurisdiction, procedure, and penalties contained in this Act as are not inconsistent with the special rules hereinbefore laid down for the conduct of legal proceedings and the recovery of penalties in *Scotland*, shall, so far as the same are applicable, extend to such last-mentioned proceedings and penalties: Provided always, that nothing in this Act contained shall be held in any way to annul or restrict the common law of *Scotland* with regard to the prosecution or punishment of offences at the instance or by the direction of the Lord Advocate, or the rights of owners or creditors in regard to enforcing a judicial sale of any ship and tackle, or to give to the High Court of Admiralty of *England* any jurisdiction in respect of salvage in *Scotland* which it has not heretofore had or exercised.

PART XI.

MISCELLANEOUS.

Contracts may be made with Natives in India, under certain Conditions, binding them to go to Australia, and thence to serve in other Ships to the United Kingdom.

544. It shall be lawful for any master or owner of a ship, or his agent, to enter into contracts with lascars or natives of the territories of the *East India* Company, binding them to proceed to any port or ports in the *Australian* colonies, either as seamen or passengers, and there to engage themselves as seamen in any ship which may happen to be there and to be bound to the United Kingdom or to any other part of Her Majesty's dominions; provided that every such contract shall be in such form, and shall contain such provisions, and shall be executed in such manner, and under such conditions for securing the return of such lascars or natives to their own country, and for other purposes, as the Governor-General of *India* in council, or the Governors of the respective Presidencies in which the contract is made, in council, may direct; and if any lascar or other person who has bound himself by any such contract is, on arriving in any of the said colonies, required to enter into an agreement to serve as a seaman in any ship bound for the United Kingdom or to any other part of Her Majesty's dominions, and if it is certified by some officer appointed for that purpose by the Governor of the said colony, that such agreement is a

proper agreement in all respects for such lascar or other person to enter into, and is in accordance with the original contract, and that the ship to which such agreement relates is a proper ship for such lascar or other person to serve in, and is properly supplied with provisions, and that there is not in the opinion of such officer any objection to the full performance of the said contract, such lascar or other person shall be bound to enter into the said agreement, and to serve as a seaman in the ship to which it relates, and shall thereupon be deemed to be for all purposes one of the crew of the ship; and if he refuses to enter into such agreement he shall, notwithstanding such refusal, be liable to the same consequences, and be dealt with in all respects in the same manner, as if he had voluntarily entered into the same; and for every lascar and other person in respect of whom such certificate is applied for, the person applying for the same shall pay to such officer as aforesaid such fee as the Governor of the colony may appoint. See sections 22 and 23 of 18 and 19 Vict., cap. 91.

Act not to affect Passenger Acts.

545. Nothing in this Act contained shall be taken to repeal or alter any of the provisions of the "Passenger Act, 1852," or of the Act of the seventeenth year of Her present Majesty, chapter eighty-four,—15 and 16 Vict., cap. 44, and 16 and 17 Vict., cap. 84.

Corporation, &c., may grant Site for Sailors' Homes.

546. The municipal corporation of any borough, being a seaport in the United Kingdom, and any body corporate, association, or trustees in any such seaport, existing or constituted for any public purposes relating to the government or benefit of persons engaged in the *British* merchant service, or to the management of docks and harbours, or for any other public purposes connected with shipping or navigation, may, with the consent of Her Majesty's Secretary of State for the Home Department, appropriate any lands vested in them or in trustees for them as a site or sites for a sailors' home or sailors' homes, and may for that purpose either retain and apply the same accordingly, or convey the same to trustees, with such powers for appointing new trustees and continuing the trust as they think fit.

Power of Colonial Legislatures to alter Provisions of Act.

547. The legislative authority of any *British* possession shall have power, by any Act or ordinance, confirmed by Her Majesty in council, to repeal, wholly or in part, any provisions of this Act relating to ships registered in such possession; but no such Act or ordinance shall take effect until such approval has been proclaimed in such possession, or until such time thereafter as may be fixed by such Act or ordinance for the purpose.

Expenses incurred by Commissioners of Customs to be paid out of the Consolidated Customs.

548. All expenses incurred by the Commissioners of Customs in the conduct of suits or prosecutions, or otherwise in carrying into effect the provisions of this Act, shall be considered as expenses having reference to the revenue of customs, and shall be paid out of the Consolidated Customs; but the Board of Trade may, with the consent of the Treasury, repay out of the Mercantile Marine Fund all or any part of such of the expenses so paid as are by the provisions of this Act chargeable on the said fund.

SCHEDULE to which this Act refers.

FORM A. (See Section 36.)

CERTIFICATE OF SURVEYOR.

Name of Ship.	British or Foreign Built.	Port of Registry.	How Propelled.
			By Steam or Sails; and if by Steam, whether by Paddle or Screw.

Number of Decks .		Build . . .	*Carvel or Clincher.*
Number of Masts .		Gallery . .	*Description of.*
Rigging	*Nature of, and whether standing or running Bowsprit.*	Head . . .	*Kind of.*
Stern	*Round, Square, or other Description.*	Framework .	*Wood or other material.*

Measurements.	Feet.	Tenths.
Length from the Forepart of Stem under the Bowsprit to the Aftside of the Head of the Sternpost . .		
Main Breadth to Outside of Plank		
Depth in Hold from Tonnage-Deck to Ceiling at Midships		

Tonnage.	No. of Tons.
Tonnage under Tonnage-Deck	
Closed-in Spaces above the Tonnage-Deck, if any, viz.:—	
Space or Spaces between Decks	
Poop	
Roundhouse	
Other enclosed Spaces, if any, naming them .	
Total . .	

(a) *Additional Particulars for Steamers.*	Tons.	
Deduction for space required for Propelling Power (say whether $\frac{37}{100}$ths or $\frac{32}{100}$ths, or as measured) .		
Length of Engine-Room (if measured) . . .	Feet.	Tenths.
Engines	Number of Engines.	
Combined Power (estimated Horse-power) . .	No. of Horses-power.	

(a) *Omit this Part if she has no Steam Power.*

Registered Tonnage (after making Deduction for Space for Propelling Power in Steamers) (a)	

I, the undersigned *A. B.* of , having surveyed the above-named ship, hereby certify that the above particulars are true.

(Signed)_____

Dated at the day of 18

FORM B. (See Section 38)

DECLARATION OF OWNERSHIP BY INDIVIDUAL OWNER.

Name of Ship	British or Foreign Built.	Port of Registry.	How Propelled.
			By Steam or Sails, and if by Steam, whether by Paddle or Screw.

Number of Decks .		Build . . .	*Carvel or Clincher.*
Number of Masts .			
Rigging.	*Nature of, and whether standing or Running Bowsprit.*	Gallery . .	*Description of.*
		Head . . .	*Kind of.*
Stern	*Round, Square, or other Description.*	Framework .	*Wood or other Material.*

Measurements.	Feet.	Tenths
Length from the Forepart of Stem under the Bowsprit to the Aftside of the Head of the Sternpost . .		
Main Breadth to Outside of Plank . . .		
Depth in Hold from Tonnage Deck to Ceiling at Midships		

Tonnage.	No. of Tons.
Tonnage under Tonnage Deck	
Closed in Spaces above the Tonnage-Deck, if any, viz —	
Space or Spaces between Decks	
Poop	
Roundhouse	
Other enclosed Spaces, if any, naming them .	
Total . .	

(a) Omit this Part if she has no Steam Power.

(a) *Additional Particulars for Steamers.*	Tons	
Deduction for Space required for Propelling Power (say whether $\frac{17}{100}$ths or $\frac{32}{100}$ths, or as measured) .		
	Feet.	Tenths.
Length of Engine-Room (if measured)		
	Number of Engines.	
Engines		
	No of Horses power.	
Combined Power (estimated Horse power) . .		

Registered Tonnage (after making Deduction for Space for Propelling Power in Steamers) (a)	

I, the undersigned *A.B.* of in the County of declare as follows:—

(1.) I am a natural-born British Subject, born at [*naming Birthplace,*] and have never taken the Oath of Allegiance to any Foreign State. *or* and have since I took the Oath of Allegiance to a Foreign State [*naming State,*] and on the Day of , taken the Oath of Allegiance to Her Majesty, and am resident * at [*naming Place,*] being a Place within Her Majesty's Dominions.

Or

I am a Denizen by Letters of Denisation dated the Day of *or* naturalised by Act of Parliament of the United Kingdom of [*cite the Year of the Reign in which the Act was passed, its Chapter and Title.*] *or* naturalised by an Ordinance of the proper legislative Authority of [*naming British Possession,*] [*cite the Year in which the Ordinance was passed, its Chapter and Title.*] and am resident at, [*naming Place*], being a Place within Her Majesty's Dominions.

And I have since I so became a Denizen, *or* since the passing of the said Act or Ordinance, and on the Day of taken the Oath of Allegiance to Her Majesty.

(2.) The Ship, the Description of which is prefixed to this my Declaration, was built at [*naming the Country and Place*] on the Day of and her Foreign Name is [*These Words to be added if the Ship is Foreign.*] *or* is Foreign-built, and I do not know the Time when or the Place where she was built, and Foreign name is *or* was condemned by the Court of [*naming Court*] on the Day of at

(3.) *C.D.* of is the Master of the said Ship.

(4.) I am entitled to be registered as †Owner of Shares in the said Ship.

(5.) To the best of my Knowledge and Belief, no Person or Body of Persons, other than such Persons or Bodies of Persons as are by the Merchant Shipping Act, 1854, qualified to be Owners of British Ships, is entitled as Owner to any Interest whatever, either legal or beneficial, in the said Ship.

And I make this solemn Declaration conscientiously believing the same to be true.

(Signed) _____

Dated at the Day of 18 .

Made and subscribed by the above-named *A.B.* in the presence of me

(Signed) _____ [*Name of Registrar or Justice of the Peace acting in and for*

* *If the Declarant is a natural-born Subject, who has taken the Oath of Allegiance to a Foreign State, or a Denizen or naturalised Subject, and is resident in a Country not within Her Majesty's Dominions, he must declare, in addition, that "he is a Member of some British Factory, or Partner in some House actually carrying on Business in the United Kingdom, or in some British Possession,"* [*naming the House and also the Place where it carries on its Business.*]

† *If the Declaration is made by a joint-Owner, add the Word "joint" before Owner.*

FORM C. (See Section 39.)

DECLARATION OF OWNERSHIP ON BEHALF OF A BODY CORPORATE AS OWNER.

Name of Ship.	British or Foreign Built.	Port of Registry.	How Propelled.
			By Steam or Sails; and if by Steam, whether by Paddle or Screw.

Number of Decks .		Build . . .	*Carvel or Clincher.*
Number of Masts .			
Rigging	*Nature of, and whether standing or running Bowsprit.*	Gallery. . .	*Description of.*
		Head . . .	*Kind of.*
Stern	*Round, Square, or other Description.*	Framework .	*Wood or other Material.*

Measurements.	Feet.	Tenths.
Length from the Forepart of Stem under the Bowsprit to the Aftside of the Head of the Sternpost . .		
Main Breadth to the Outside of Plank . . .		
Depth in Hold from Tonnage-Deck to Ceiling at Midships		

Tonnage.	No. of Tons.
Tonnage under Tonnage-Deck	
Closed-in Spaces above the Tonnage-Deck, if any, viz.:—	
Space or Spaces between Decks . . .	
Poop	
Roundhouse	
Other enclosed Spaces, if any, naming them .	
Total . .	

(a) *Omit this part if she has no Steam Power.*

(a) *Additional Particulars for Steamers.*	Tons.	
Deduction for Space required for Propelling Power, (say whether $\frac{37}{100}$ths or $\frac{32}{100}$ths, or as measured) .		
Length of Engine-Room (if measured) . . .	Feet.	Tenths.
Engines	Number of Engines.	
Combined Power (estimated Horse-power). . .	No. of Horses-power.	

Registered Tonnage (after making Deduction for Space for Propelling Power in Steamers) (a)	

I, the undersigned *A.B.* of in the County of [*Secretary*], or [*duly appointed Public Officer*], of the Company declare as follows:—

(1.) The said Company was incorporated by or by virtue of

an Act of Parliament of the United Kingdom [*cite the Year of the Reign in which the Act was passed, its Chapter, and Title.*]	*or*	a Charter granted by Her Majesty and dated the Day of	*or*	an Act or Ordinance of the Legislature of [*cite the Year in which the Act or Ordinance was passed, its Chapter and Title.*]	*or*	the Act 7 & 8 Vict. c. 110, from the Day of being the Date of the certificate of complete Registration.

(2.) The said Company is subject to the Laws of the United Kingdom, *or* of the British Possession of and has its principal place of Business at

(3.) The Ship, the Description of which is prefixed to this my Declaration, was built at

[*naming the Country and Place*] on the Day of and her Foreign name is [*these Words to be added if the Ship is Foreign.*]	*or*	is Foreign-built, and I do not know the Time when or the Place where she was built, and her Foreign name is	*or*	was condemned by the Court of [*naming Court*] on the Day of at		

(4.) *C.D* of is the Master of the said Ship.

(5.) The said Company is entitled to be registered as Owner of Shares in the said Ship.

(6.) To the best of my Knowledge and Belief no Person or Body of Persons, other than such Persons or Bodies of Persons as are by the Merchant Shipping Act, 1854, qualified to be Owners of British Ships, is entitled as Owner to any Interest whatever, either legal or beneficial, in the said Ship.

And I make this solemn Declaration conscientiously believing the same to be true.

(Signed) _____

Dated at the Day of 18

Made and subscribed by the above-named *A.B.*
in the presence of me

(Signed) _____ [*Name of Registrar.*]

FORM D. (See Section 44.)

CERTIFICATE OF REGISTRY.

*No.*_____ — *Date of Registry.*

_____.

Name of Ship.	British or Foreign Built.	Port of Registry.	How Propelled.
			By Steam or Sails; and if by Steam, whether by Paddle or Screw.

Number of Decks .		Build . . .	*Carvel or Clincher.*
Number of Masts .			
Rigging	*Nature of, and whether standing or running Bowsprit.*	Gallery . .	*Description of.*
		Head . . .	*Kind of.*
Stern	*Round, Square, or other Description.*	Framework .	*Wood or other Material.*

Measurement.	Feet.	Tenths.
Length from the Forepart of Stem under the Bowsprit to the Aftside of the Head of the Sternpost . .		
Main Breadth to Outside of Plank		
Depth in Hold from Tonnage-Deck to Ceiling at Midships		

Tonnage.	No. of Tons.
Tonnage under Tonnage-Deck	
Closed-in Spaces above the Tonnage-Deck, if any, viz.:—	
Space or Spaces between Decks . . .	
Poop	
Roundhouse	
Other enclosed Spaces, if any, naming them	
Total . .	

(a) *Omit this Part if she has no Steam Power.*

(a) *Additional Particulars for Steamers.*	Tons.	
Deduction for Space required for Propelling Power, (say whether $\frac{37}{100}$ths or $\frac{32}{100}$ths, or as measured) .		
Length of Engine-Room (if measured)	Feet.	Tenths.
Engines	Number of Engines.	
Combined Power (estimated Horse-power) . . .	No. of Horses-power.	

Register Tonnage (after making Deduction for Space for Propelling Power in Steamers) (a)	

I, the undersigned *A.B.*, Registrar of the Port of
hereby certify, that,

(1.) The Ship, the Description of which is prefixed to this my Certificate, has been duly surveyed, and that the above Description is true.

(2.) *C.D.* of is the Master of the said Ship.

(3.) The said Ship

was built at [*naming the Country and Place*] on the Day of and her Foreign Name is [*these Words to be added if the Ship is Foreign.*]	*or*	is Foreign-built, and the Time when and the Place where she was built is not known, and her Foreign Name is	*or*	was condemned by the Court of [*naming Court*] on the Day of at

(4.) The several Persons and Bodies Corporate whose names are hereunder written [*or endorsed*] are Owners of the above Ship, in the Proportions set opposite their respective Names.

Signed _____ Registrar.

Names of the several Owners above [*or* within] mentioned.	Number of Sixty-fourth Shares held by each Owner.
[*Name.*]	*Thirty-two.*
	Sixteen.
	Eight.
	Eight.

Signed _____ Registrar.

Dated at _____

the Day of 18 .

Notice.—A Certificate of Registry granted under the Merchant Shipping Act, 1854, is not a Document of Title. It does not necessarily contain Notice of *all* Changes of Ownership, and in no case does it contain an Official Record of any Mortgages affecting the Ship.

FORM E. (See Section 55.)

BILL OF SALE.

No. _____ *Date of Registry.*

Name of Ship.	British or Foreign Built.	Port of Registry.	How Propelled.
			By Steam or Sails; and if by Steam, whether by Paddle or Screw.

Number of Decks .		Build . . .	*Carvel or Clincher.*
Number of Masts .			
Rigging	*Nature of, and whether standing or running Bowsprit.*	Gallery . .	*Description of.*
		Head . . .	*Kind of.*
Stern	*Round, Square, or other Description.*	Framework .	*Wood or other Material.*

Measurements.	Feet.	Tenths.
Length from the Forepart of Stem under the Bowsprit to the Aftside of the Head of the Sternpost . .		
Main Breadth to Outside of Plank		
Depth in Hold from Tonnage-Deck to Ceiling at Midships		

Tonnage.	No. of Tons.
Tonnage under Tonnage-Deck	
Closed-in Spaces above the Tonnage-Deck, if any, viz.:—	
Space or Spaces between Decks	
Poop	
Roundhouse	
Other enclosed Spaces, if any, naming them .	
Total . .	

(a) *Omit this Part if she has no Steam Power.*

(a) *Additional Particulars for Steamers.*	Tons.	
Deduction for Space required for Propelling Power (say whether $\frac{37}{100}$ths or $\frac{32}{100}$ths, or as measured) .		
	Feet.	Tenths.
Length of Engine-Room (if measured)		
	Number of Engines.	
Engines		
	No. of Horses-power.	
Combined Power (estimated Horse-power) . .		

Register Tonnage (after making Deduction for Space for Propelling Power in Steamers) (a)	

I, *A.B.* of in the County of , being Owner of Shares in the Ship above particularly described, in consideration of £ paid to me by *C.D.* of in the County of hereby transfer to the said *C.D.* the said Shares.

Alter, as necessary, if there be more than one Owner.

Further, I, *A.B.* for myself and my Heirs, covenant with the said *C.D.* and his Assigns, that I have Power to transfer in manner aforesaid the said Shares, and that the same are free from Encumbrances* *save as appears by the Registry of the said Ship.*

* *Omit, if no Encumbrances, the words in italics.*

In witness whereof I have hereunto subscribed my Name and affixed my Seal, this Day of 18 .

(L.S.) (Signed) ——— - ——— —

Executed by the above-named
in the Presence of

[*insert Description and Place of Residence.*]

FORM F. (See Section 56.)

DECLARATION OF OWNERSHIP BY INDIVIDUAL TRANSFEREE.

No. _____ — *Date of Registry.*

Name of Ship.	British or Foreign Built.	Port of Registry.	How Propelled.
			By Steam or Sails; and if by Steam, whether by Paddle or Screw.

Number of Decks .		Build . . .	*Carvel or Clincher.*
Number of Masts .			
Rigging	*Nature of, and whether standing or running Bowsprit.*	Gallery . .	*Description of.*
		Head . . .	*Kind of.*
Stern	*Round, Square, or other Description.*	Framework .	*Wood or other Material.*

Measurements.	Feet.	Tenths.
Length from the Forepart of Stem under the Bowsprit to the Aftside of the Head of the Sternpost . .		
Main Breadth to Outside of Plank		
Depth in Hold from Tonnage-Deck to Ceiling at Midships		

Tonnage.	No. of Tons.
Tonnage under Tonnage-Deck	
Closed-in Spaces above the Tonnage-Deck, if any, viz.:—	
Space or Spaces between Decks	
Poop	
Roundhouse	
Other enclosed Spaces, if any, naming them .	
Total . .	

(*) Omit this Part if she has no Steam Power.

(*) *Additional Particulars for Steamers.*	Tons.	
Deduction for Space required for Propelling Power (say whether $\frac{27}{100}$ths or $\frac{32}{100}$ths, or as measured) .		
Length of Engine-Room (if measured) . . .	Feet.	Tenths.
Engines	Number of Engines.	
Combined Power (estimated Horse-power) . .	No. of Horses-power.	

Register Tonnage (after making Deduction for Space for Propelling Power in Steamers) (*)	

I, the undersigned *A.B.*, of in the County of declare as follows :—

(1.) I am a natural-born Subject of Her Majesty, born at [*naming Place of Birth*], and have never taken the Oath of Allegiance to any Foreign State. *or* and have since I took the Oath of Allegiance to a Foreign State [*naming State,*] and on the Day of , taken the Oath of Allegiance to Her Majesty, and am resident * at [*naming Place,*] being a Place within Her Majesty's Dominions.

Or

I am a Denizen by Letters of Denisation dated the Day of *or* naturalised by Act of Parliament of the United Kingdom [*cite the Year in which the Act was passed, its Chapter and Title.*] *or* naturalised by an Ordinance of the proper legislative authority of [*naming British Possession,*] [*cite the Year in which the Ordinance was passed, its Chapter and Title.*] and am resident at [*naming Place*], being a Place within Her Majesty's Dominions.

And I have since I so became a Denizen *or* since the passing of the said Act or Ordinance, and on the Day of , taken the Oath of Allegiance to Her Majesty.

(2.) To the best of my Knowledge and Belief, no Person or Bodies of Persons, other than such Persons or Bodies of Persons as are by the Merchant Shipping Act, 1854, qualified to be Owners of British Ships, is entitled as Owner to any Interest whatever, either legal or beneficial, in said Ship.

And I make this solemn Declaration conscientiously believing the same to be true.

(Signed)

Dated at the Day of 18 .

Made and subscribed by the above-named *A.B.*, in the Presence of me

(Signed) [*Name of Registrar or Justice of the Peace acting in and for* .]

* *If the Declarant is a natural-born Subject, who has taken the Oath of Allegiance to a Foreign State, or a Denizen or a naturalised Subject, and is resident in a Country not within Her Majesty's Dominions, he must declare, in addition, that "he is a Member of some "British Factory, or Partner in some "House actually carrying on Business in the "United Kingdom, or in "some British "Possession," [naming the House and also the Place where it carries on its Business.]*

FORM G. (See Section 56)

DECLARATION OF OWNERSHIP ON BEHALF OF A BODY CORPORATE AS TRANSFEREE.

No. _____ *Date of Registry.*

Name of Ship.	British or Foreign Built.	Port of Registry.	How Propelled.
			By Steam or Sails; and if by Steam, whether by Paddle or Screw.

Number of Decks .		Build . . .	*Carvel or Clincher.*
Number of Masts .			
Rigging	*Nature of, and whether standing or running Bowsprit.*	Gallery . .	*Description of.*
		Head . . .	*Kind of.*
Stern	*Round, Square, or other Description.*	Framework .	*Wood or other Material.*

Measurements.	Feet.	Tenths.
Length from the Forepart of Stem under the Bowsprit to the Aftside of the Head of the Sternpost .		
Main Breadth to Outside of Plank		
Depth in Hold from Tonnage-Deck to Ceiling at Midships		

Tonnage.	No. of Tons.
Tonnage under Tonnage-Deck	
Closed-in Spaces above the Tonnage-Deck, if any, viz.:—	
Space or Spaces between Decks . . .	
Poop	
Roundhouse	
Other enclosed Spaces, if any, naming them .	
Total . .	

(a) *Omit this part if she has no Steam Power.*

(a) *Additional Particulars for Steamers.*	Tons.	
Deduction for Space required for Propelling Power (say whether $\frac{37}{100}$ths or $\frac{32}{100}$ths, or as measured) .		
Length of Engine-Room (if measured) . . .	Feet.	Tenths.
Engines	Number of Engines.	
Combined Power (estimated Horse-power) . .	No. of Horses-power.	

Register Tonnage (after making Deduction for Space for Propelling Power in Steamers) (a)

I, the undersigned *A B*, of in the County of [*Secretary*], *or* [*duly appointed Public Officer*], of the Company, declare as follows —

(1) The said Company was incorporated by or by virtue of

an Act of Parliament of the United Kingdom [*cite the Year in which the Act was passed, its Chapter and Title*]	*or*	a Charter granted by Her Majesty and dated the Day of	*or*	an Act or Ordinance of the Legislature of [*cite Year in which the Act or Ordinance was passed, its Chapter and Title*]	*or*	the Act 7 & 8 Vict c 110, from the Day of being the Date of the Certificate of complete Registration	

(2) The said Company is subject to the Laws of the United Kingdom, *or* of the British Possession of , and has its principal Place of Business at

(3) The said Company is entitled to be registered as Transferee of Shares in the said Ship

And I make this solemn Declaration conscientiously believing the same to be true

(Signed)_____

Dated at the Day of 18

Made and subscribed by the above named *A B*,
in the Presence of me

(Signed) _____ [*Name of Registrar*]

FORM H. (See Section 58.

DECLARATION BY OWNER TAKING BY TRANSMISSION.

No. _____ *Date of Registry.*

Name of Ship.	British or Foreign Built.	Port of Registry.	How Propelled.
			By Steam or Sails; and if by Steam, whether by Paddle or Screw.

Number of Decks .		Build . . .	*Carvel or Clincher.*
Number of Masts .			
Rigging	*Nature of, and whether standing or running Bowsprit.*	Gallery . .	*Description of.*
		Head . . .	*Kind of.*
Stern	*Round, Square, or other Description.*	Framework .	*Wood or other Material.*

Measurements.	Feet.	Tenths.
Length from the Forepart of Stem under the Bowsprit to the Aftside of the Head of the Sternpost . .		
Main Breadth to Outside of Plank		
Depth in Hold from Tonnage-Deck to Ceiling at Midships		

Tonnage.	No. of Tons.
Tonnage under Tonnage-Deck	
Closed-in Spaces above the Tonnage-Deck, if any, viz.:—	
Space or Spaces between Decks . . .	
Poop	
Roundhouse	
Other enclosed Spaces, if any, naming them .	
Total . .	

(a) *Omit this Part if she has no Steam Power.*

(a) *Additional Particulars for Steamers.*	Tons.	
Deduction for Space required for Propelling Power (say whether $\frac{37}{100}$ths or $\frac{42}{100}$ths, or as measured) .		
Length of Engine-room (if measured)	Feet.	Tenths.
Engines	Number of Engines.	
Combined Power (estimated Horse-power) . . .	No. of Horses-power.	

Register Tonnage (after making Deduction for Space for Propelling Power in Steamers) (a)	

I, (b) the undersigned *A.B.*, of in the County of declare as follows :—

(1.) I am a natural-born Subject of Her Majesty, born at [*naming Place of Birth*], and have never taken the Oath of Allegiance to any Foreign State. *or* and have since I took the Oath of Allegiance to a Foreign State [*naming State*] and on the Day of taken the Oath of Allegiance to Her Majesty, and am resident * at [*naming Place*] being a Place within Her Majesty's Dominions.

Or

I am a Denizen by Letters of Denization dated the Day of *or* naturalised by Act of Parliament of the United Kingdom [*cite the Year in which the Act was passed, its Chapter and Title.*] *or* naturalised by an Ordinance of the proper legislative Authority of [*naming British Possession*] [*cite the Year in which the Ordinance was passed, its Chapter and Title.*] and am resident at [*naming Place*], being a Place within Her Majesty's Dominions.

And I have since I so became a Denizen, *or* since the passing of the said Act or Ordinance, and on the Day of , taken the Oath of Allegiance to Her Majesty.

(2.) I declare that the Person appearing by the Register-Book to be the Owner of Shares in the Ship above described † [*died at in the County of having first duly made his will, dated the Day of whereby he appointed me Executor, and I proved his said Will on the Day of in the Court of*], or [*died at in the County of on the Day of intestate, and that Letters of Administration of his Estate and Effects were on the Day of duly granted to me by the Court of*]. *or* We declare that *C.D.*, the Person appearing on the Register-Book to be the Owner of Shares in the Ship above described, was on the Day of † [*duly adjudged a Bankrupt*], or [*declared Insolvent*], and that we were on the Day of appointed Assignees of the said *C.D.*, and we are by Law entitled to be registered as Owners of the said Shares of the said Ship in place of the said *C.D.* *or* I declare that on the Day of I intermarried with and am now the Husband of *C.D.*, the Person appearing on the Register-Book to be the Owner of Shares in the said Ship, and I declare that on such Marriage the Interest of the said *C.D.* became by Law vested in me, and that I am entitled to be registered as Owner of the said Shares in place of the said *C.D.*

(3.) To the best of my Knowledge and Belief, no Person or Body of Persons other than such Persons or Bodies of Persons as are by the Merchant Shipping Act, 1854, qualified to be Owners of British Ships, is entitled as Owner to any Interest whatever, either legal or beneficial, in the said Ship.

And I make this solemn Declaration conscientiously believing the same to be true.

(Signed)_____

Dated at the Day of 18 .

Made and subscribed by the above-named *A.B.*, in the Presence of me

(Signed)_____ [*Name of Registrar or Justice of the Peace acting in and for* .]

(b) *Alter accordingly if more than One Person makes the Declaration*

* *If the Declarant is a natural-born Subject, who has taken the Oath of Allegiance to a Foreign State, or a Denizen or a naturalised Subject, and is resident in a Country not within her Majesty's Dominions, he must declare in addition, that "he is a Member of some "British Factory, Partner in some "House actually carrying "on Business "in the United "Kingdom or "in some British Possession," [naming the House and also the Place where it carries on its Business.]*

† *Alter according to Circumstances.*

FORM I. (See Section 66.)

FORM OF MORTGAGE.

No. _____ *Date of Registry.*

Name of Ship.	British or Foreign Built.	Port of Registry.	How Propelled.
			By Steam or Sails; and if by Steam, whether by Paddle or Screw.

Number of Decks .		Build . . .	*Carvel or Clincher.*
Number of Masts .			
Rigging	*Nature of, and whether standing or running Bowsprit.*	Gallery . .	*Description of.*
		Head . , .	*Kind of.*
Stern	*Round, Square, or other Description.*	Framework .	*Wood or other Material.*

Measurements.	Feet.	Tenths.
Length from the Forepart of Stem under the Bowsprit to the Aftside of the Head of the Sternpost .		
Main Breadth to Outside of Plank		
Depth in Hold from Tonnage-Deck to Ceiling at Midships		

Tonnage.	No. of Tons.
Tonnage under Tonnage-Deck	
Closed-in Spaces above the Tonnage-Deck, if any viz.:	
Space or Spaces between Decks . . .	
Poop	
Roundhouse	
Other enclosed Spaces, if any, naming them .	
Total . .	

(a) *Omit this Part if she has no Steam Power.*

(a) *Additional Particulars for Steamers.*	Tons.	
Deduction for Space required for Propelling Power (say whether $\frac{27}{100}$ths or $\frac{32}{100}$ths, or as measured) .		
	Feet.	Tenths.
Length of Engine-Room (if measured) . . .		
	Number of Engines.	
Engines		
	No. of Horses-power.	
Combined Power (estimated Horse-power) . .		

Register Tonnage, (after making Deduction for Space for Propelling Power in Steamers) (a)	

I, the undersigned *A.B.*, of in the County of in consideration of £ this Day lent to me by *C.D.* of in the County of do hereby, for myself and my Heirs, covenant with the said *C.D.*, firstly, that I, or my Heirs, Executors, or Administrators, will pay to the said *C.D.* the said sum of £ together with Interest thereon at the rate of £ by the £100 in the Year, on the Day of next; and, secondly, that if the said Principal Sum is not paid on the said Day, I, or my Heirs, Executors, or Administrators, will, during such Time as the same or any Part thereof remain unpaid, pay to the said *C.D.* Interest on the whole or such part thereof as may for the Time being remain unpaid at the Rate of £ by the £100 in the Year, by equal half-yearly Payments, on the Day of in every Year; and for better securing to the said *C.D.* the Repayment in manner aforesaid of the said Principal Sum and Interest, I hereby mortgage to the said *C.D.* Shares of which I am the Owner in the Ship above particularly described.

Alter Covenant as may be necessary, so as to secure a general Balance of Accounts or otherwise, as the Case may require.

Lastly, I, *A.B.*, for myself and my Heirs, covenant with the said *C.D.* and his Assigns, that I have power to mortgage in manner aforesaid the above-mentioned Shares, and that the same are free from Incumbrances* *save as appears by the Registry of the said Ship.*

* *Omit, if no Incumbrances, the Words in Italics.*

In witness whereof I have hereto subscribed my Name and affixed my Seal, this Day of

(L.S.) (Signed)

Executed by the above-named *A.B.*,
in the Presence of *X.Y.*

FORM K. (See Section 73.)

Transfer of Mortgage to be Endorsed on Original Mortgage.

I, the within-mentioned *C.D.*, in consideration of £ this Day paid to me by *X.Y.* of in the County of hereby transfer to him the Benefit of the within-written Security. In witness whereof I have hereunto subscribed my Name and affixed my Seal, this the Day of

(L.S.) (Signed)

Executed by the above-named *C.D.*,
in the Presence of *E.F.*

FORM L. (See Section 74.)

DECLARATION BY MORTGAGEE TAKING BY TRANSMISSION.

No. –

Date of Registry.

Name of Ship.	British or Foreign Built.	Port of Registry.	How Propelled.
			By Steam or Sails; and if by Steam, whether by Paddle or Screw.

Number of Decks .		Build . . .	*Carvel or Clincher.*
Number of Masts .			
Rigging	*Nature of, and whether standing or running Bowsprit.*	Gallery . .	*Description of.*
		Head . . .	*Kind of.*
Stern	*Round, Square, or other Description.*	Framework .	*Wood or other Material.*

Measurements.	Feet.	Tenths.
Length from the Forepart of Stem under the Bowsprit to the Aftside of the Head of the Sternpost .		
Main Breadth to Outside of Plank		
Depth in Hold from Tonnage-Deck to Ceiling at Midships		

Tonnage.	No. of Tons.
Tonnage under Tonnage-Deck	
Closed-in Spaces above the Tonnage-Deck, if any, viz.:—	
Space or Spaces between Decks . . .	
Poop	
Roundhouse	
Other enclosed Spaces, if any, naming them .	
Total . .	

(a) *Omit this Part if she has no Steam Power.*

(a) *Additional Particulars for Steamers.*	Tons.	
Deduction for Space required for Propelling Power (say whether $\frac{37}{100}$ths or $\frac{32}{100}$ths, or as measured) .		
Length of Engine-room (if measured) . . .	Feet.	Tenths
Engines	Number of Engines.	
Combined Power (estimated Horse-power) . .	No. of Horses-power.	

Register Tonnage (after making Deduction for Space for Propelling Power in Steamers) (a)

I, the undersigned *A.B.*, of in the County of declare as follows:—

I declare that the Person appearing by the Register-Book to be the Mortgagee of Shares in the Ship above described* [*died at in the County of having first duly made his Will, dated the Day of whereby he appointed me Executor, and I proved his said Will on the Day of in the Court of*], or [*died at in the County of on the Day of intestate, and that Letters of Administration of his Estate and Effects were on the Day of duly granted to me by the Court of*].

or

We declare that *C.D.*, the Person appearing on the Register-Book to be the Mortgagee of Shares in the Ship above described,* [*was on the Day of duly adjudged a Bankrupt*], or [*was duly declared Insolvent*], and that we were on the Day of appointed Assignees of the said *C.D.*, and we are by Law entitled to be registered as Mortgagees of the said Shares of the said Ship in place of the said *C.D.*

or

I declare that on the Day of I intermarried with and am now the Husband of *C.D.*, the Person appearing on the Register-Book to be the Mortgagee of Shares in the said Ship, and I declare that on such Marriage the Interest of the said *C.D.* became by Law vested in me, and that I am entitled to be registered as Mortgagee of the said Shares in place of the said *C.D.*

* *Alter according to Circumstances.*

And I make this solemn Declaration conscientiously believing the same to be true.

(Signed)_____

Made and subscribed by the above-named *A.B.*, in the Presence of me

(Signed)_____ *Registrar or Justice of the Peace.*

FORM M. (See Section 79.)

CERTIFICATE OF MORTGAGE.

*No.*_____ *Date of Registry.*

Name of Ship.	British or Foreign Built.	Port of Registry.	How Propelled.
			By Steam or Sails; and if by Steam, whether by Paddle or Screw.

Number of Decks .		Build . . .	*Carvel or Clincher.*
Number of Masts .			
Rigging	*Nature of, and whether standing or running Bowsprit.*	Gallery . .	*Description of.*
		Head . . .	*Kind of.*
Stern	*Round, Square, or other Description.*	Framework . .	*Wood or other Material.*

Measurements.	Feet.	Tenths.
Length from the Forepart of Stem under the Bowsprit to the Aftside of the Head of the Sternpost .		
Main Breadth to Outside of Plank		
Depth in Hold from Tonnage-Deck to Ceiling at Midships		

Tonnage.	No. of Tons.
Tonnage under Tonnage-Deck	
Closed-in Spaces above the Tonnage-Deck, if any, viz.:—	
Space or Spaces between Decks	
Poop	
Roundhouse	
Other enclosed Spaces, if any, naming them .	
Total . .	

(a) *Omit this Part if she has no Steam Power.*

(a) *Additional Particulars for Steamers.*	Tons.	
Deduction for Space required for Propelling Power (say whether $\frac{37}{100}$ths or $\frac{32}{100}$ths, or as measured) .		
Length of Engine-Room (if measured)	Feet.	Tenths.
Engines	Number of Engines.	
Combined Power (estimated Horse-power) . .	No. of Horses-power.	

Register Tonnage (after making Deduction for Space for Propelling Power in Steamers) (a)

Account of Title of Subscribing Owner.		
Names of the several subscribing Owners.	Number of Sixty-fourth Shares held by each of the subscribing Owners.	Account of Mortgages or Certificates of Mortgage or Sale granted in respect of Shares of Subscribing Owners.
(*Name and Description of Owner.*)		

(1.) We the several above-mentioned Persons, whose names are hereunto subscribed, being Owners of the above Ship in the Proportions set opposite our respective Names in the above Account of Title (*but subject to the several Mortgages above mentioned*), hereby appoint *A.B.* of and *C.D.* of and each of them, our Attorneys and Attorney jointly or severally in our Names and on our Behalf to mortgage our Shares in the above Ship, and to execute and do all such Deeds, Matters, and Things as may be necessary for carrying into effect the Power hereby given.

Alter accordingly if there is only One Appointer or One Attorney

(2.) We declare that the Amount of Money to be raised by Mortgage under this Power shall not exceed £ , and that the Rate of Interest at which the same is raised shall not exceed £ for every £100 by the Year.

(3.) We declare that the Power of mortgaging hereby given may be exercised at

(4.) We declare that the above Power shall not be exercised after the expiration of Months from the Date hereof.

In witness whereof we have hereunto subscribed our Names and affixed our Seals, this Day of

(L.S.) *E.F.* of
(L.S.) *G.H.* of
&c.

I, *M.N.*, Registrar of hereby certify that the above-written Particulars relating to the Ship and to the Title of the several above-mentioned Owners, are correct; and I further certify that the said Owners have executed this Certificate in manner above appearing.

(Signed) _____ Registrar.

N.B.—*Mortgages created under this Power must be endorsed on the Certificate in the following Form, or as near thereto as Circumstances permit:—*

The Day of
The within-mentioned Shares in the Ship were this Day mortgaged to X.Y. of to secure £ and Interest.*

(*Signed*) _____ *Registrar or Consular Officer.*

* *If the Mortgage is to cover Advances, insert "a Sum not exceeding £ " or "General Balance of Account," as the Case may be.*

N.B.—All the Owners of the Ship must be Parties to this Document.

FORM N. (See Section 79.)

CERTIFICATE OF SALE.

*No.*_____ *Date of Registry.*

Name of Ship.	British or Foreign Built.	Port of Registry.	How Propelled.
			By Steam or Sails; and if by Steam, whether by Paddle or Screw.

Number of Decks .		Build . . .	*Carvel or Clincher.*
Number of Masts .			
Rigging	*Nature of, and whether standing or running Bowsprit.*	Gallery . .	*Description of.*
		Head . . .	*Kind of.*
Stern	*Round, Square, or other Description.*	Framework .	*Wood or other Material.*

Measurements.	Feet.	Tenths.
Length from the Forepart of Stem under the Bowsprit to the Aftside of the Head of the Sternpost . .		
Main Breadth to the Outside of Plank . . .		
Depth in Hold from Tonnage-Deck to Ceiling at Midships		

Tonnage.	No. of Tons.
Tonnage under Tonnage-Deck	
Closed-in Spaces above the Tonnage-Deck, if any, viz.:—	
Space or Spaces between Decks	
Poop	
Roundhouse	
Other enclosed Spaces, if any, naming them .	
Total . .	

(a) *Omit this Part if she has no Steam Power.*

(a) *Additional Particulars for Steamers.*	Tons.	
Deduction for Space required for Propelling Power (say whether $\frac{17}{100}$ths or $\frac{32}{100}$ths, or as measured) .		
Length of Engine-Room (if measured) . . .	Feet.	Tenths.
Engines	Number of Engines.	
Combined Power (estimated Horse-power) . .	No. of Horses-power.	

Registered Tonnage (after making Deduction for Space for Propelling Power in Steamers) (a)	

Account of Title to the above-mentioned Ship.		
Names of the Owners of the Ship above mentioned.	Number of Sixty-fourth Shares held by each Owner.	Account of Mortgages, or Certificates of Mortgage, or Sale granted in respect of Ship.
(*Name.*)		

(1.) We, the several above-mentioned Persons, whose Names are hereunto subscribed, being Owners of the above Ship in the proportions set opposite our respective Names in the above-mentioned Account of Title (*but subject to the several Mortgages above-mentioned*), hereby appoint *A.B.* of , and *C.D.* of , and each of them, our Attorneys and Attorney jointly and severally in our Names and on our Behalf to sell the above Ship, and to execute and do all such Deeds, Matters, and Things as may be necessary for carrying into effect the Power hereby given.

Alter accordingly if only One Appointer or One Attorney.

(2.) We declare that the Ship shall not be sold for a less Sum than £

(3.) We declare that the Ship may be sold at

(4.) We declare that the above Power shall not be exercised after the Expiration of Months from the Date hereof.

In witness whereof we have hereunto subscribed our Names and affixed our Seals, this Day of

(L.S.) *E.F.* of
(L.S.) *G.H.* of
&c.

I, *M.N.*, Registrar of , hereby certify that the above-written Particulars relating to the Ship and to the Title of the several above-mentioned Owners are correct; and I further certify that the said Owners have executed this Certificate in manner above appearing.

(Signed)_____*Registrar.*

FORM O. (See Section 83.)

Form of Revocation.

No. — — — *Date of Registry.*

Name of Ship.	British or Foreign Built.	Port of Registry.	How Propelled.
			By Steam or Sails; and if by Steam, whether by Paddle or Screw.

Number of Decks .		Build . . .	*Carvel or Clincher.*
Number of Masts .			
Rigging	*Nature of, and whether standing or running Bowsprit.*	Gallery . .	*Description of.*
		Head . . .	*Kind of.*
Stern	*Round, Square, or other Description.*	Framework .	*Wood or other Material.*

Measurements.	Feet.	Tenths.
Length from the Forepart of Stem under the Bowsprit to the Aftside of the Head of the Sternpost . .		
Main Breadth to Outside of Plank		
Depth in Hold from Tonnage-Deck to Ceiling at Midships		

Tonnage.	No. of Tons.
Tonnage under Tonnage-Deck	
Closed-in Spaces above the Tonnage-Deck, if any, viz.:—	
Space or Spaces between Decks . . .	
Poop	
Roundhouse	
Other enclosed Spaces, if any, naming them .	
Total . .	

(a) *Omit this Part if she has no Steam Power.*

(a) *Additional Particulars for Steamers.*	Tons.	
Deduction for Space required for Propelling Power (say whether $\frac{37}{100}$ths or $\frac{32}{100}$ths, or as measured) .		
Length of Engine-Room (if measured) . . .	Feet.	Tenths.
Engines	Number of Engines.	
Combined Power (estimated Horse-power) . .	No. of Horses-power.	

Registered Tonnage (after making Deduction for Space for Propelling Power in Steamers) (a)

(b) *Alter According to Circumstances the Words printed in Italics.*

(c) *Insert Names of Attorneys.*

We (b) *Owners* of the Ship above described, hereby revoke the Power of mortgaging (or selling) the said Ship given *by us* to (c) by a Certificate of Mortgage (or Sale) dated the Day of

In witness whereof we have hereunto subscribed our Names and affixed our Seals, this Day of

(L.S.) *E.F.* of
(L.S.) *G.H.* of
&c.

I, *M.N.*, Registrar of hereby certify that the said *Owners* have Executed this Power of Revocation in manner above appearing.

(Signed)——— ——— *Registrar.*

TABLE P. (See Section 125.)

Fees to be Charged for Matters Transacted at Shipping Offices.

1. Engagement of Crews.

	£	s.	d.
In Ships under 60 Tons . .	0	4	0
60 to 100 ,, . .	0	7	0
100 to 200 ,, . .	0	15	0
200 to 300 ,, . .	1	0	0
300 to 400 ,, . .	1	5	0
400 to 500 ,, . .	1	10	0
500 to 600 ,, . .	1	15	0
600 to 700 ,, . .	2	0	0
700 to 800 ,, . .	2	5	0
800 to 900 ,, . .	2	10	0
900 to 1000 ,, . .	2	15	0
Above 1000 ,, . .	3	0	0

And so on for Ships of larger Tonnage, adding for every 100 Tons above 1000, Five Shillings.

2. Engagement of Seamen separately.
Two Shillings for Each.

3. Discharge of Crews.

	£	s.	d.
In Ships under 60 Tons . .	0	4	0
60 to 100 ,, . .	0	7	0
100 to 200 ,, . .	0	15	0
200 to 300 ,, . .	1	0	0
300 to 400 ,, . .	1	5	0
400 to 500 ,, . .	1	10	0
500 to 600 ,, . .	1	15	0
600 to 700 ,, . .	2	0	0
700 to 800 ,, . .	2	5	0
800 to 900 ,, . .	2	10	0
900 to 1000 ,, . .	2	15	0
Above 1000 ,, . .	3	0	0

And so on for Ships of larger Tonnage, adding for every 100 Tons above 1000, Five Shillings.

4. Discharge of Seamen separately.
Two Shillings for each.

TABLE Q. (See Section 126.)

Sums to be Deducted from Wages by way of Partial Repayment of Fees in Table P.

1. In respect of Engagements and Discharges of Crews, upon each Engagement and each Discharge.

	s.	d.
From Wages of any Mate, Purser, Engineer, Surgeon, Carpenter, or Steward	1	6
,, all others except Apprentices	1	0

2. In respect of Engagements and Discharges of Seamen separately, upon each Engagement and each Discharge.
One Shilling.

TABLE R. (See Section 133.)

Fees to be Charged on Examinations.

	£	s.	d.
For a Certificate as Master	2	0	0
For a Certificate as Mate	1	0	0

(For Scale of Fees to be charged on Examination of Engineers, see Table B. in the Schedule to 25 and 26 Vict. c. 63.)

TABLE S. (See Section 292.)

NUMBER AND DIMENSIONS OF BOATS WITH WHICH SEA-GOING SHIPS ARE TO BE PROVIDED.

Registered Tonnage.		Column 1. To be carried by Sailing Ships and Steam Ships.								Column 2. To be carried by Sailing Ships and by Steam Ships, when they do not carry the boats in Col 3.				Column 3. To be carried by Steam Ships which do not carry the boat in Col. 2.								Total Number of Boats.	
		Boats.				Boats.				Launches.				Boats.				Life Boats.					
Sailing Ships.	Steam Ships.	Number.	Length.	Breadth.	Depth.	Number.	Length.	Breadth.	Depth.	Number.	Length.	Breadth.	Depth.	Number.	Length.	Breadth.	Depth.	Number.	Length.	Breadth.	Depth.	Sailing Ships.	Steam Ships.
Tons.	Tons.		Ft.	Ft. In.	Ft. In.		Ft.	Ft. In.	Ft. In.		Ft.	Ft. In.	Ft. In.		Ft.	Ft. In.	Ft. In.		Ft.	Ft. In.	Ft. In.		
...	1000 and upwards	1	18	5 6	2 3	2	24	5 6	2 6	1	27	8 6	3 8	2	22	5 6	2 6	2	28	8 6	3 6	...	7
...	800 to 1000	1	18	5 6	2 3	2	26	6 6	2 8	1	26	8 0	3 8	2	22	5 6	2 6	...	..	...	...	...	4 or 5
800 and upwards	500 to 800	1	18	5 6	2 3	2	24	5 6	2 6	1	26	8 0	3 8	2	22	5 6	2 6	...	..	..	...	4	4 or 5
600 to 800	360 to 500	1	16	5 6	2 3	2	24	5 6	2 6	1	25	7 0	3 6	2	22	5 6	2 6	..	...	...	...	4	4 or 5
400 to 600	240 to 360	1	16	5 6	2 3	1	22	5 6	2 5	1	22	6 6	3 3	2	22	5 6	2 6	...	..	...	...	3	3 or 4
200 to 400	120 to 240	1	14	5 0	2 2	...	...	...	..	1	20	6 0	3 0	2	22	5 6	2 6	...	...	..	...	2	2 or 3
100 to 200	60 to 120	1	14	5 0	2 2	...	...	...	..	1	10	5 6	2 9	2	18	5 6	2 4	...	...	...	...	2	2 or 3
Under 100	Under 60	1	14	5 0	2 2	...	..	...	...	..	...	...	...	.	...	...	...	...	...	...	...	1	1

as the case may be.

Note.—In Sailing Ships carrying the Number of Boats above specified, and Steam Ships carrying the larger of the Two Numbers above specified, the Boats are to be considered sufficient, if their aggregate Cubic Contents are equal to the aggregate Cubic Contents of the Boats specified.

In Steam Ships carrying the smaller of the Two Numbers above specified, One of the Boats must be a Launch of the Capacity specified in Col. 2.

In Sailing Ships of 200 Tons Burden and under, not carrying Passengers, a Dingy may be substituted for the Boat in Col. 1.

In Sailing Ships of 150 Tons Burden and under, not carrying Passengers, a substantial Boat of Capacity sufficient to carry the Crew may be substituted for those above specified.

In all Steam Ships, Two Paddle-box Boats may be substituted for any Two of the Boats in Col. 3.

TABLE T. (See Section 314.)

FEES TO BE CHARGED FOR THE SURVEY OF PASSENGER STEAMERS.

	£	s.	d.
For Steamers not exceeding 100 Tons	2	0	0
For Steamers exceeding 100 and not exceeding 300 Tons	3	0	0
For Steamers exceeding 300 and not exceeding 600 Tons	4	0	0
And for every additional 300 Tons, an additional	1	0	0

TABLE U. (See Section 333.)

RATES OF PILOTAGE TO BE DEMANDED AND RECEIVED BY QUALIFIED PILOTS,

OUTWARDS.

From	To	7 Feet and under.	8 Feet.	9 Feet	10 Feet.	11 Feet.	12 Feet.
		£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.
The Sea, Orfordness, the Downs, Hoseley Bay, and *vice versâ*.	Nore Warps	3 13 6	4 2 9	4 12 0	5 1 3	5 5 9	6 5 0
	Gravesend, Chatham, Standgate Creek, or Blackstakes . . .	4 12 0	5 7 9	6 3 3	6 18 0	7 11 9	8 5 6
	Long Reach	4 16 6	5 12 3	6 8 0	7 2 6	7 18 3	8 14 9
	Woolwich or Blackwall	5 5 9	6 1 6	6 17 0	7 11 9	8 10 3	9 4 0
	Moorings or London Docks	5 16 0	6 9 9	7 3 6	7 17 3	8 19 6	9 13 3
The Nore or Warps, and *vice versâ*.	Gravesend, Standgate Creek, or Blackstakes	1 18 9	2 3 3	2 7 0	2 10 6	2 19 9	3 6 3
	Long Reach or Chatham	2 6 0	2 10 6	2 15 3	2 19 9	3 9 0	3 18 3
	Woolwich or Blackwall	2 15 3	3 1 9	3 8 0	3 13 6	4 2 9	4 10 3
	Moorings or London Docks	3 4 6	3 10 9	3 17 3	4 2 9	4 16 6	5 5 9
Gravesend Reach, and *vice versâ*.	Long Reach	0 9 3	0 14 9	1 0 3	1 5 3	1 10 0	1 14 6
	Woolwich or Blackwall	1 3 0	1 7 6	1 12 3	1 16 9	2 4 3	2 13 6
	Moorings or London Docks	1 7 6	1 14 0	2 0 6	2 6 0	2 15 3	3 4 5
	Sheerness, Standgate Creek, or Blackstakes	2 15 3	2 19 0	3 1 9	3 4 6	3 13 6	4 2 9
	Chatham	3 4 6	3 8 0	3 10 9	3 13 6	4 2 9	4 12 0
Long Reach, and *vice versâ*.	Woolwich or Blackwall	0 18 6	1 2 0	1 4 9	1 7 6	1 16 9	2 6 0
	Moorings or London Docks	1 7 6	1 11 3	1 14 0	1 16 9	2 6 0	2 15 3
	Sheerness, Standgate Creek, or Blackstakes	3 4 6	3 8 0	3 10 9	3 13 6	4 2 9	4 12 0
	Chatham	3 13 6	3 17 3	4 0 0	4 2 9	4 12 0	5 1 3
Woolwich or Blackwall, and *vice versâ*.	Moorings or London Docks	0 18 6	1 2 0	1 4 9	1 7 6	1 10 0	1 12 3
	Sheerness, Standgate Creek, or Blackstakes	3 13 6	3 17 3	4 0 0	4 2 9	4 12 0	5 1 3
	Chatham	4 2 9	4 6 6	4 9 3	4 12 0	5 1 3	5 10 6

TABLE U. (See Section 333.)

FOR PILOTING SHIPS WITHIN THE UNDER-MENTIONED LIMITS.

OUTWARDS.										
13 Feet.	14 Feet.	15 Feet.	16 Feet.	17 Feet.	18 Feet.	19 Feet.	20 Feet.	21 Feet.	22 Feet.	23 Feet and upwards
£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.
6 13 6	7 7 3	7 16 6	8 14 9	9 8 6	10 17 0	11 10 0	12 17 6	14 5 3	16 11 3	18 8 0
8 19 6	9 13 3	10 7 0	11 0 9	11 14 6	14 1 6	16 13 0	19 6 6	21 5 0	23 3 9	25 2 3
9 8 6	10 0 0	10 16 3	11 10 0	13 3 6	15 9 0	18 11 9	21 5 0	23 0 0	24 16 9	26 13 6
10 2 6	11 0 9	11 14 6	12 8 6	14 3 6	16 5 9	19 11 0	22 1 6	24 16 9	27 12 0	...
10 11 6	11 10 0	12 8 6	13 2 3	14 14 6	17 0 6	20 10 3	23 4 6	...	...	...
3 11 9	3 15 6	4 2 9	4 10 3	5 1 3	5 16 0	6 8 9	7 14 6	8 14 0	9 13 3	10 12 6
4 2 9	4 7 0	4 13 9	5 5 0	5 16 0	6 15 3	8 5 6	9 13 3	10 12 6	11 11 9	12 15 3
4 19 0	5 8 6	5 16 0	6 4 3	7 2 6	8 3 9	9 4 0	11 11 9	12 11 3	13 16 0	...
5 15 0	6 4 3	6 13 6	7 2 6	8 1 0	9 4 0	11 0 9	12 17 6	13 16 0	...	...
1 19 0	2 3 9	2 8 3	2 13 0	2 17 6	3 2 0	3 6 9	3 11 3	4 12 0	5 10 6	...
3 2 6	3 11 9	3 18 3	4 5 6	4 13 9	5 1 2	6 4 3	7 11 9	8 19 6	9 13 3	...
3 13 6	4 2 9	4 12 0	5 1 3	5 10 6	5 19 6	7 7 3	8 14 9	...	...	...
4 12 0	5 1 3	5 10 6	5 19 6	6 8 9	6 18 0	7 7 3	7 16 5	...	...	...
5 1 3	5 10 6	5 19 6	6 8 9	6 18 0	7 7 3	7 16 5	8 5 6	...	...	...
2 15 3	3 4 6	3 13 6	4 2 9	4 12 0	5 3 6	5 16 0	6 8 9	8 5 6	9 4 0	...
3 4 6	3 13 6	4 2 9	4 12 0	5 3 6	5 16 0	6 8 9	7 7 3	9 4 0	...	...
5 1 3	5 10 6	5 19 6	6 8 9	6 18 0	7 7 3	7 17 6	8 5 6	8 14 9	...	...
5 10 6	5 19 6	6 8 9	6 18 0	7 7 3	7 16 6	8 5 6	8 14 9	9 4 0	...	...
1 16 9	2 1 6	2 6 0	2 10 6	2 15 3	2 19 9	3 4 6	3 9 0	...	...	...
5 10 6	5 19 6	6 8 9	6 18 0	7 7 3	7 16 6	8 5 6	8 14 9	...	...	...
5 19 6	6 8 9	6 18 0	7 7 3	7 17 6	8 5 6	8 14 9	9 4 0	...	...	...

[Continued.

TABLE U.—(*Continued*).

INWARDS.

From	To	Under 7 Feet.	From 7 Feet to 10 Feet.	11 Feet.	12 Feet.	13 Feet.
		£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.
The Downs	Nore, Sheerness, Standgate Creek, Gravesend	5 5 0	7 17 6	8 13 3	9 9 0	10 4 9
	Long Reach	5 16 0	8 8 6	9 9 0	10 4 10	11 3 0
	Blackwall or London	6 12 3	8 19 6	10 4 9	11 0 6	12 1 6
Standgate Creek	Gravesend	3 6 2	3 17 0	4 8 2	4 19 0	5 10 3

14 Feet.	15 Feet.	16 Feet.	17 Feet.	18 Feet.	19 Feet.	20 Feet.	21 Feet	22 Feet.	23 Feet and upwards.
£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.
11 0 6	11 16 3	12 12 0	13 7 9	16 1 3	19 0 0	22 1 0	24 5 0	26 9 2	28 13 3
11 18 10	12 18 3	13 14 0	15 0 9	17 14 4	21 4 2	24 5 1	26 9 2	28 13 3	30 17 4
12 17 3	14 0 4	14 16 0	16 13 9	19 7 5	23 8 3	26 9 2	28 13 3	...	...
6 1 3	6 12 3	7 3 3	7 14 4	8 5 4	8 16 4	9 7 4	...	...	...

NOTE 1. Foreign Ships are to pay One-Fourth more than British Ships, except when privileged to enter the Ports of the United Kingdom upon paying the same Duties of Tonnage as are paid by British Ships, in which cases such Ships are to pay the same Rates of Pilotage only as are payable by British Ships.

NOTE 2. For Half a Foot exceeding the above Draughts of Water, the medium Price between the Two Limits. For intermediate Distances a proportionate Rate.

[*Continued.*

TABLE U.—(*Continued*).

INWARDS.

For putting a Pilot on board, and for Pilotage of Ships to the Anchorage to the Downs.*	60 Tons, and under 150.	150 Tons, and under 250.	250 Tons, and under 400.	400 Tons, and under 600.	600 Tons, and upwards.
	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.
From off Dungeness to off Folkstone, the Church bearing N.N.W. by Compass	2 0 0	3 0 0	3 10 0	4 0 0	5 5 0
From off Folkstone to the South Foreland, the Lights in one	1 10 0	2 0 0	2 10 0	3 0 0	4 4 0
From off the South Foreland to the Downs . . .	1 5 0	1 5 0	1 10 0	2 0 0	3 3 0

* When the Pilot is put on board by a Boat from the Shore, One-Seventh to the Pilot, and the remaining Six-Sevenths to the Boat and Crew.

In the River Thames, above Gravesend.

For a Boat of a Class carrying an Anchor of above 4 Cwt., with a corresponding Tow-Line	£2 2 0	Per Trip for the whole Distance from Gravesend to London; and in proportion for any Part of that Distance.
Do. Do. 2 Cwt.	1 1 0	
Do. Do. under ,, ...	0 15 0	

And for each Man's Service in those Boats, 8s. per Tide.

For removing a Ship from Moorings into a Dry or Wet Dock:—

For a Ship under 300 Tons	£0 15 0
,, 300 to 600 ,, ...	1 1 0
,, 600 to 1000 ,, ...	1 11 6
,, above 1000 ,, ...	2 2 0

TABLE V. (See Section 455.)

Fees and Remuneration of Receivers.

	£	s.	d.
For every Examination on Oath instituted by a Receiver with respect to any Ship or Boat which may be or may have been in Distress, a Fee not exceeding	1	0	0
But so that in no Case shall a larger Fee than Two Pounds be charged for Examinations taken in respect of the same Ship and the same Occurrence, whatever may be the Number of the Deponents.			
For every Report required to be sent by the Receiver to the Secretary of the Committee for managing the Affairs of Lloyd's in London, the Sum of .	0	10	0
For Wreck taken by the Receiver into his Custody, a Percentage of Five per Cent. upon the Value thereof,			
But so that in no Case shall the whole Amount of Percentage so payable exceed Twenty Pounds.			
In Cases where any Services are rendered by a Receiver, in respect of any Ship or Boat in Distress, not being Wreck, or in respect of the Cargo or other Articles belonging thereto, the following Fees instead of a Percentage; that is to say,			
If such a Ship or Boat, with her Cargo, equals or exceeds in value Six Hundred Pounds, the Sum of Two Pounds for the first, and the Sum of One Pound for every subsequent, Day during which the Receiver is employed on such Service; but if such Ship or Boat, with her Cargo, is less in value than Six Hundred Pounds, One Moiety of the above-mentioned Sum.			

TABLE W. (See Section 486.)

Salvage Bond.

[*N.B.—Any of the Particulars not known, or not required, by reason of the Claim being only against the Cargo, &c., may be omitted.*]

Whereas certain Salvage Services are alleged to have been rendered by the Ship [*insert Names of Ship and of Commander*], Commander, to the Merchant Ship [*insert Names of Ship and Master*], Master, belonging to [*Name and Place of Business or Residence of Owner of Ship*], freighted by [*the same of the Freighter*], and to the Cargo therein, consisting of [*state very shortly the Descriptions and Quantities of the Goods, and the Names and Addresses of their Owners and Consignees*]:

And whereas the said Ship and Cargo have been brought into the Port of [*insert Name and Situation of Port*], and a Statement of the Salvage Claim has been sent to [*insert the Name of the Consular Officer or Vice-Admiralty Judge, and of the Office he fills*], and he has fixed the Amount to be inserted in this Bond at the Sum of [*state the Sum*]:

Now I, the said [*Master's Name*], do hereby, in pursuance of the Merchant Shipping Act, 1854, bind the several Owners for the Time being of the said Ship and of the Cargo therein, and of the Freight payable in respect of such Cargo, and their respective Heirs, Executors, and Administrators, to pay among them such Sum, not exceeding the said Sum of [*state the Sum fixed*], in such Proportions and to such Persons as [*if the Parties agree on any other Court, substitute the Name of it here*], the High Court of Admiralty in England shall adjudge to be payable as Salvage for the Services so alleged to have been rendered as aforesaid.

In witness whereof I have hereunto set my Hand and Seal, this [*insert the Date*] Day of

Signed, sealed, and delivered by the said [*Master's Name*],

(L.S.)

In the Presence of [*Name of Consular Officer or Vice-Admiralty Judge and of the Office he fills*].

APPENDIX No. II.

THE MERCHANT SHIPPING AMENDMENT ACT, 1855.

18° AND 19° VICTORIÆ, CAP. 91.

AN ACT TO FACILITATE THE ERECTION AND MAINTENANCE OF COLONIAL LIGHTHOUSES, AND OTHERWISE TO AMEND THE MERCHANT SHIPPING ACT, 1854. [14TH AUGUST 1855.]

WHEREAS it is expedient to make provision for facilitating the erection and maintenance of lighthouses in the *British* possessions abroad, and otherwise to amend the Merchant Shipping Act, 1854: Be it therefore enacted:

1. This Act may be cited as "The Merchant Shipping Amendment Act, 1855," and shall be taken to be part of the Merchant Shipping Act, 1854, and shall be construed accordingly.

2. Her Majesty may, by order in Council, fix dues for Colonial Lighthouses.

3. No such dues to be levied in any colony without the consent of the Colonial Legislature.

4. Mode of collecting the said dues. 17 and 18 Vict., cap. 104, secs. 399, 400, 401.

5. Dues to be paid over to Her Majesty's Paymaster-General.

6. Dues to be applied to expenses of lighthouse, &c., for which they are levied.

7. Power to borrow money on security of dues. 17 and 18 Vict., cap. 104, secs. 424, 425, 426.

Accounts for each Lighthouse, &c., to be kept, and laid before Parliament, and to be Audited.

8. Accounts shall be kept of all sums expended in the construction, repair, or maintenance of every lighthouse, buoy, or beacon in the *British* possessions abroad, for which dues are levied under the authority of this Act, and of the dues received in respect thereof, in such manner as the Board of Trade may direct, and shall be laid before Parliament annually; and the said accounts shall be audited in such manner as Her Majesty may by order in Council direct. 17 and 18 Vict., cap. 104, sec. 428.

REGISTRY OF SHIPS (PART II. OF MERCHANT SHIPPING ACT, 1854).

Penalty on False Declarations under Part II. of Merchant Shipping Act.

9. Any person who, in any declaration made in the presence of or produced to any registrar of shipping, in pursuance of the second part of the Merchant Shipping Act, 1854, or in any documents or other evidence produced to such registrar, wilfully makes, or assists in making, or procures to be made, any false statement concerning the title to or the ownership of, or the interests existing in any ship, or any share or shares in any ship, or who utters, produces, or makes use of any declaration or document containing any such false statement, knowing the same to be false, shall be guilty of a misdemeanour. 17 and 18 Vict., cap. 104, sec. 103.

Shares in Shipping within the Trustee Act, 1850.

10. Shares in ships registered under the said Merchant Shipping Act, 1854, shall be deemed to be included in the word "stock," as defined by the Trustee Act, 1850, and the provisions of such last-mentioned Act shall be applicable to such shares accordingly. 13 and 14 Vict., cap. 60.

Forms of Instruments.

11. In any case in which any bill of sale, mortgage, or other instrument for the disposal or transfer of any ship or any share or shares therein, or of any interest therein, is made in any form or contains any particulars other than the form and particulars prescribed and approved for the purpose by or in pursuance of the Merchant Shipping Act, 1854, no registrar shall be required to record the same without the express direction of the Commissioners of Her Majesty's Customs. 17 and 18 Vict., cap. 104, sec. 96.

Delivery of Certificate upon Transfer of Registry.

12. Upon the transfer of the registry of a ship from one port to another, the certificate of registry required by the ninetieth section of the Merchant Shipping Act, 1854, to be delivered up for that purpose, may be delivered up to the registrar of either of such ports.

Exemption of certain Ships from having Name Painted on Stern.

13 *The Commissioners of Customs may, with the consent of the Board of Trade, exempt any pleasure yacht from the provision contained in the thirty-fourth section of the Merchant Shipping Act,* 1854, *which requires the name of every ship and the port to which she belongs to be painted on her stern.* 17 *and* 18 Vict., *cap.* 104, *sec.* 34. (Repealed by 34 and 35 Vict., cap. 110, sec. 12. See 34 and 35 Vict., cap. 110, sec. 6, and 36 and 37 Vict., cap. 85, secs. 3 and 5.)

Ships Measured under Rule II. may be Measured under Rule I.

14. The owner of any ship which is measured under Rule II. contained in the twenty-second section of the Merchant Shipping Act, 1854, may at any subsequent period apply to the Commissioners of Customs to have the said ship remeasured under Rule I. contained in the twenty-first section of

the same Act, and the said commissioners [1] may thereupon, and upon payment of such fee not exceeding seven shillings and sixpence for each transverse section as they may authorise, direct the said ship to be remeasured accordingly, and the number denoting the register tonnage shall be altered accordingly. 17 and 18 Vict., cap. 104, secs. 21 and 22.

General Register Books in London.

15. The copy or transcript of the register of any *British* ship which is kept by the Chief Registrar of Shipping at the Custom-house in *London*, or by the Registrar-General of Seamen, under the direction of Her Majesty's Commissioners of Customs or of the Board of Trade, shall have the same effect to all intents and purposes as the original register of which the same is a copy or transcript. 17 and 18 Vict., cap. 104, sec. 107.

MASTERS AND SEAMEN (PART III. OF MERCHANT SHIPPING ACT, 1854).

Extension of Provisions concerning the Relief of Destitute Seamen.

16. The Board of Trade may issue instructions concerning the relief to be administered to distressed seamen and apprentices, in pursuance of the two hundred and eleventh and two hundred and twelfth sections of the Merchant Shipping Act, 1854, and may by such instructions determine in what cases and under what circumstances and conditions such relief is to be administered; and all powers of recovering expenses incurred with respect to distressed seamen and apprentices, which by the two hundred and thirteenth section of the said Act are given to the Board of Trade, shall extend to all expenses incurred by any foreign Government for the purposes aforesaid, and repaid to such Government by Her Majesty's Government, and shall likewise extend to any expenses incurred by the conveying home such seamen or apprentices in foreign as well as *British* ships; and all provisions concerning the relief of distressed seamen and apprentices, being subjects of Her Majesty, which are contained in the said sections of the said Act, and in this section, shall extend to such seamen and apprentices, not being subjects of Her Majesty, as are reduced to distress in foreign parts by reason or their having been shipwrecked, discharged, or left behind from any *British* ship; subject nevertheless to such modifications and directions concerning the cases in which relief is to be given to such foreigners, and the country to which they are to be sent, as the Board of Trade may, under the circumstances, think fit to make and issue. 17 and 18 Vict., cap. 104, secs. 211, 212, and 213.

Enactment concerning Savings Banks extended to Seamen in the Navy.

17. The enactment of the Merchant Shipping Act, 1854, relating to savings banks, shall apply to all seamen, and to their wives and families, whether such seamen belong to the royal navy or to the merchant service, or to any other sea-service. 17 and 18 Vict., cap. 104, sec. 180.

Additional Powers of Naval Courts.

18. Any naval court summoned, under the provisions of the Merchant Shipping Act, 1854, to hear any complaint touching the conduct of the

[1] The Board of Trade are now substituted for the Commissioners.

master or any of the crew of any ship, shall, in addition to the powers given to it by the said Act, have power to try the said master or any of the said crew for any offences against the Merchant Shipping Act, 1854, in respect of which two justices would, if the case were tried in the United Kingdom, have power to convict summarily, and by order duly made to inflict the same punishments for such offences which two justices might in the case aforesaid inflict upon summary conviction: provided, that in cases where an offender is sentenced to imprisonment, the sentence shall be confirmed in writing by the senior naval or consular officer present at the place where the court is held, and the place of imprisonment, whether on land or on board ship, shall be approved by him as a proper place for the purpose, and copies of all sentences made by any naval court summoned to hear any such complaint as aforesaid shall be sent to the commander-in-chief or senior naval officer of the station. 17 and 18 Vict., cap. 104, secs. 260 to 266.

WRECKS, CASUALTIES, AND SALVAGE (PART VIII. OF MERCHANT SHIPPING ACT, 1854).

In case of Wreck of Foreign Ships, Consul-General to be deemed Agent of Owner.

19. Whenever any articles belonging to or forming part of any foreign ship which has been wrecked on or near the coasts of the United Kingdom, or belonging to or forming part of the cargo thereof, are found on or near such coasts, or are brought into any port in the United Kingdom, the consul-general of the country to which such ship, or, in the case of cargo, to which the owners of such cargo, may have belonged, or any consular officer of such country authorised in that behalf by any treaty or agreement with such country, shall, in the absence of the owner of such ship or articles, and of the master or other agent of the owner, be deemed to be the agent of the owner, so far as relates to the custody and disposal of such articles.

Remuneration for Services by Coastguard.

20. In cases where services are rendered by officers or men of the coastguard service in watching or protecting shipwrecked property, then, unless it can be shown that such services have been declined by the owner of such property or his agent at the time they were tendered, or that salvage has been claimed and awarded for such services, the owner of the shipwrecked property shall pay in respect of the said services remuneration according to a scale to be fixed by the Board of Trade, so, however, that such scale shall not exceed any scale by which payment to officers and men of the coastguard for extra duties in the ordinary service of the Commissioners of Customs is for the time being regulated; and such remuneration shall be recoverable by the same means, and shall be paid to the same persons, and accounted for and applied in the same manner as fees received by receivers appointed under the Merchant Shipping Act, 1854.

LEGAL PROCEDURE (PART X. OF MERCHANT SHIPPING ACT, 1854).

Jurisdiction in case of Offences on board Ship

21. If any person, being a *British* subject, charged with having committed any crime or offence on board any *British* ship on the high seas or in any foreign port or harbour, or if any person, not being a *British* subject, charged with having committed any crime or offence on board any *British* ship on the high seas, is found within the jurisdiction of any court of justice in Her Majesty's dominions which would have had cognisance of such crime or offence if committed within the limits of its ordinary jurisdiction, such court shall have jurisdiction to hear and try the case as if such crime or offence had been committed within such limits: provided that nothing contained in this section shall be construed to alter or interfere with the Act of the thirteenth year of Her present Majesty, chapter ninety-six. 12 and 13 Vict., cap. 96.

MISCELLANEOUS (PART XI. OF MERCHANT SHIPPING ACT, 1854).

Relief of Destitute Lascars.

22. It shall be the duty of the *East India* Company to take charge of and send home or otherwise provide for all persons, being Lascars or other natives of the territories under the government of the said Company, who are found destitute in the United Kingdom; and if any such person is relieved and maintained by any guardians, overseers, or other persons administering the relief of the poor, such overseers, guardians, or other persons may, by letter sent through the post or otherwise, give notice thereof in writing to the secretary of the Court of Directors of the *East India* Company, specifying, so far as is practicable, the following particulars, viz.:—

(1.) The name of the person so relieved or maintained.
(2.) The Presidency or district or part of the territories of the *East India* Company of which he professes to be a native.
(3.) The name of the ship in which he was brought to the United Kingdom.
(4.) The port or place abroad from which such ship sailed, and the port or place in the United Kingdom at which such ship arrived when he was so brought to the United Kingdom, and the time of such arrival.

And the said *East India* Company shall repay to the said overseers, guardians, or other persons, out of the revenues of the said Company, all moneys duly expended by them in relieving or maintaining such destitute person, after the time at which such notice aforesaid is sent or otherwise given.

Contracts may be made with Natives in India, under certain Conditions, binding them to go to the United Kingdom, and then to serve in other Ships back to India or elsewhere.

23. It shall be lawful for any master or owner of a ship or his agent to enter into agreements with Lascars or natives of the territories of the *East*

India Company, binding them to proceed to any port or ports in the United Kingdom, either as seamen or as passengers, and there to enter into a further agreement to serve as seamen in any ship which may happen to be there, and to be bound to any port in the territories of the *East India* Company: provided, that every such original agreement shall be made in such form, and shall contain such provisions, and shall be executed in such manner, and under such conditions for securing the return of such Lascars or natives to their own country, and for other purposes, as the Governor-General of *India* in council, or the Governors of the respective Presidencies in which the original agreement is made, in council may direct; and if any Lascar or other person who has bound himself by any such original agreement is, on arriving in the United Kingdom, required to enter into a further agreement to serve as a seaman in any ship bound to any port in any territories of the *East India* Company, and if it is certified by some officer appointed for that purpose by the *East India* Company that such further agreement is a proper agreement in all respects for such Lascar or other person to enter into, and is in accordance with the original agreement, and that the ship to which such further agreement relates is in all respects a proper ship for such Lascar or other person to serve in, and that there is not, in the opinion of such officer, any objection to the full performance of the said original agreement, such Lascar or other person shall be deemed to be engaged under such further agreement, and to serve as a seaman in the ship to which it relates, and shall thereupon be deemed to be for all purposes one of the crew of the ship; and for every Lascar or other person in respect of whom such certificate is applied for, the person applying for the same shall pay to such officer as aforesaid such fee as the *East India* Company may appoint, not exceeding ten shillings.

Saving of former Enactments.

24. Nothing herein contained shall be deemed to repeal or affect any provisions contained in the twenty-fifth, twenty-sixth, twenty-seventh, twenty-eighth, twenty-ninth, thirtieth, thirty-first, or thirty-fourth sections of the Act of the fourth year of King *George* the Fourth, chapter eighty, or in the sixteenth section of the Act of the eighteenth year of Her present Majesty, chapter one hundred and twenty. 4 Geo. IV., cap. 80, secs. 25 to 34; 17 and 18 Vict., cap. 120, sec. 16.

APPENDIX No. III.

THE MERCHANT SHIPPING ACTS, &c., AMENDMENT.

25° AND 26° VICTORIÆ, CAP. 63.

AN ACT TO AMEND "THE MERCHANT SHIPPING ACT, 1854," "THE MERCHANT SHIPPING ACT AMENDMENT ACT, 1855," AND "THE CUSTOMS CONSOLIDATION ACT, 1853. [29TH JULY 1862.]

WHEREAS it is expedient further to amend "The Merchant Shipping Act, 1854," "The Merchant Shipping Act Amendment Act, 1855," and "The Customs Consolidation Act, 1853:" Be it enacted as follows:

1. This Act may be cited as "The Merchant Shipping Act Amendment Act, 1862," and shall be construed with and as part of "The Merchant Shipping Act, 1854," hereinafter termed the Principal Act.

Enactments in Table A. Repealed.

2. The enactments described in Table A. in the Schedule to this Act shall be repealed as therein-mentioned, except as to any liabilities incurred before such repeal.

REGISTRY AND MEASUREMENT OF TONNAGE (PART II. OF MERCHANT SHIPPING ACT, 1854).

Equities not excluded by Merchant Shipping Act.

3. It is hereby declared that the expression "beneficial interest," whenever used in the second part of the Principal Act, includes interests arising under contract and other equitable interests; and the intention of the said Act is that, without prejudice to the provisions contained in the said Act for preventing notice of trusts from being entered in the register book or received by the registrar, and without prejudice to the powers of disposition and of giving receipts conferred by the said Act on registered owners and mortgagees, and without prejudice to the provisions contained in the said Act relating to the exclusion of unqualified persons from the ownership of *British* ships, equities may be enforced against owners and mortgagees of ships in respect of their interest therein, in the same manner as equities may be enforced against them

in respect of any other personal property. See sections 37 (2),—38 (5),—39 (5),—100.

Tonnage Rates under Local Acts may be levied on the Registered Tonnage.

4. Any body corporate or persons having power to levy tonnage rates on ships may, if they think fit, with the consent of the Board of Trade, levy such tonnage rates upon the registered tonnage of the ships as determined by the rules for the measurement of tonnage for the time being in force under the Principal Act, notwithstanding that the local Act or Acts under which such rates are levied provides for levying the same upon some different system of tonnage measurement.

CERTIFICATES FOR ENGINEERS (PART III. OF MERCHANT SHIPPING ACT 1854).

Steam-ships to carry Certificated Engineers.

5. On and after the first day of *June* one thousand eight hundred and sixty-three, every steam-ship which is required by the Principal Act to have a master possessing a certificate from the Board of Trade shall also have an engineer or engineers possessing a certificate or certificates from the Board of Trade as follows; (that is to say),

(1.) Engineers' certificates shall be of two grades, viz., "first-class engineers' certificates," and "second-class engineers' certificates."

(2.) Every foreign-going steam-ship of one hundred nominal horse power or upwards shall have as its first and second engineers two certificated engineers, the first possessing a "first-class engineer's certificate," and the second possessing a "second-class engineer's certificate" or a certificate of the higher grade.

(3.) Every foreign-going steam-ship of less than one hundred nominal horse power shall have as its only or first engineer an engineer possessing a "second-class engineer's certificate" or a certificate of the higher grade.

(4.) Every sea-going home-trade passenger steam-ship shall have as its only or first engineer an engineer possessing a "second-class engineer's certificate" or a certificate of the higher grade:

(5.) Every person who, having been engaged to serve in any of the above capacities in any such steam-ship as aforesaid, goes to sea in that capacity without being at the time entitled to and possessed of such certificate as is required by this section, and every person who employs any person in any of the above capacities in such ship without ascertaining that he is at the time entitled to and possessed of such certificate as is required by this section, shall for each such offence incur a penalty not exceeding fifty pounds.

Examinations for Engineers' Certificates of Competency.

6. The Board of Trade shall from time to time cause examinations to be held of persons who may be desirous of obtaining certificates of competency as engineers: For the purpose of such examinations the Board of Trade

shall from time to time appoint and remove examiners, and award the remuneration to be paid to them; lay down rules as to the qualification of applicants, and as to the times and places of examination; and generally do all such acts as it thinks expedient in order to carry into effect the examination of such engineers as aforesaid.

Fees to be paid by Applicants for Examination.

7. All applicants for examination shall pay such fees, not exceeding the sums specified in the Table marked B. in the Schedule hereto, as the Board of Trade directs; and such fees shall be paid to such persons as the said Board appoints for that purpose, and shall be carried to the account of the Mercantile Marine Fund.

Certificates of Competency to be granted to those who pass.

8. The Board of Trade shall deliver to every applicant who is duly reported to have passed the examination satisfactorily, and to have given satisfactory evidence of his sobriety, experience, and ability, a certificate of competency, as first-class engineer, or as second-class engineer, as the case may be.

Engineers' Certificates of Service to be delivered on Proof of Certain Service.

9. Certificates of service for engineers, differing in form from certificates of competency, shall be granted as follows; (that is to say),

(1.) Every person who, before the first day of *April* one thousand eight hundred and sixty-two, has served as first engineer in any foreign-going steam-ship of one hundred nominal horse power or upwards, or who has attained or attains the rank of engineer in the service of Her Majesty or of the *East India* Company, shall be entitled to a "first-class engineer's certificate" of service.

(2.) Every person who, before the first day of *April* one thousand eight hundred and sixty-two, has served as second engineer in any foreign going steam-ship of one hundred nominal horse power or upwards, or as first or only engineer in any other steam-ship, or who has attained or attains the rank of first-class assistant-engineer in the service of Her Majesty, shall be entitled to a "second-class engineer's certificate" of service.

Each of such certificates of service shall contain particulars of the name, place, and time of birth, and the length and nature of the previous service of the person to whom the same is delivered; and the Board of Trade shall deliver such certificates of service to the various persons so respectively entitled thereto, upon their proving themselves to have attained such rank or to have served as aforesaid, and upon their giving a full and satisfactory account of the particulars aforesaid.

Certain Provisions of Merchant Shipping Act to apply to Engineers' Certificates.

10. The provisions of the Principal Act, with respect to the certificates of competency or service of masters and mates, contained in the 138th,

139th, 140th, 161st, and 162d sections of the said Act, shall apply to certificates of competency or service granted under this Act, in the same manner as if certificates of competency and service to be granted to engineers under this Act were specially mentioned and included in the said sections.

Power of Board of Trade and Local Marine Board to investigate Conduct of Certificated Engineers.

11. The power by the 241st section of the Principal Act given to the Board of Trade, or to any Local Marine Board, of instituting investigations into the conduct of any master or mate, whom it has reason to believe to be from incompetency or misconduct unfit to discharge his duties, shall extend to any certificated engineer whom the Board of Trade, or any Local Marine Board, has reason to believe to be from incompetency or misconduct unfit to discharge his duties, in the same manner as if in the said section the words "certificated engineer" had been inserted after "master" wherever "master" occurs in such section.

Declaration of Engineer Surveyor to contain Statement concerning Engineer's Certificate.

12. The declaration required to be given by the engineer surveyor under section 309 of the Principal Act shall in the case of a ship by this Act required to have a certificated engineer, contain, in addition to the statements in the said section mentioned, a statement that the certificate or certificates of the engineer or engineers of such ship is or are such and in such condition as is required by this Act.

MASTERS AND SEAMEN (PART III. OF MERCHANT SHIPPING ACT, 1854).

Third Part of Act to apply to Fishing-Boats, Lighthouse Vessels, and Pleasure Yachts, with certain Exceptions.

13. The following vessels (that is to say),

(1.) Registered sea-going ships exclusively employed in fishing on the coasts of the United Kingdom;

(2.) Sea-going ships belonging to any of the three General Lighthouse Boards;

(3.) Sea-going ships being pleasure yachts;

Shall be subject to the whole of the third part of the Principal Act; except sections 136, 143, 145, 147, 149, 150, 151, 152, 153, 154, 155, 157, 158, 161, 162, 166, 170, 171, 231, 256, 279, 280, 281, 282, 283, 284, 285, 286, and 287.

Local Marine Board may determine the Number of Quorum.

14. Whereas doubts have been entertained whether Local Marine Boards have the power of determining a quorum: It is hereby declared, that the power by the 119th section of the Principal Act given to every Local Marine Board of regulating the mode in which its meetings are to be held and its business conducted, includes the power of determining a quorum; nevertheless, after the passing of this Act such quorum shall never consist of less than three members.

Titles of Shipping-Masters.

15. The offices termed shipping offices in the Principal Act shall be termed Mercantile Marine Offices, and the officers termed shipping-masters and deputy shipping-masters in the Principal Act shall be termed superintendents and deputy superintendents of such offices; but nothing in this section contained shall invalidate or affect any act which may be done at any such office under the title of a shipping office, or any act which may be done by, with, or to any of the said officers under the title of shipping-master or deputy shipping-master.

Punishment for Embezzlement in Shipping Offices.

16. Any person appointed to any office or service by or under any Local Marine Board shall be deemed to be a clerk or servant within the meaning of the 68th section of the Act of the 25th year of the reign of Her present Majesty, cap. 96.

If any such person fraudulently applies or disposes of any chattel, money, or valuable security received by him whilst employed in such office or service for or on account of any such Local Marine Board, or for or on account of any other public board or department, to his own use, or any use or purpose other than that for which the same was paid, intrusted to, or received by him, or fraudulently withholds, retains, or keeps back the same or any part thereof, contrary to any lawful directions or instructions which he is required to obey in relation to such office or service, he shall be deemed guilty of embezzlement within the meaning of the said section.

Any such person shall, on conviction of such offence as aforesaid, be liable to the same pains and penalties as are thereby imposed upon any clerk or servant for embezzlement.

In any indictment against such person for such offence, it shall be sufficient to charge any such chattel, money, or valuable security as the property either of the board by which he was appointed, or of the board or department for or on account of which he may have received the same; and no greater particularity in the description of the property shall be required in such indictment in order to sustain the same, or in proof of the offence alleged, than is required in respect of an indictment or the subject-matter thereof by the 71st section of the said last-mentioned Act.

Examinations of Masters and Mates at Ports where there are no Local Marine Boards.

17. Whereas it is expedient to make provision in certain cases for holding examinations of applicants for certificates of competency at places where there are no Local Marine Boards: Be it enacted, that the Board of Trade, if satisfied that serious inconvenience exists at any port in consequence of the distance which applicants for certificates have to travel in order to be examined, may, with the concurrence of any Local Marine Board, send the examiner or examiners of that Local Marine Board to the port where such inconvenience exists; and thereupon the said examiner or examiners shall proceed to such port, and shall there examine the applicants in the presence of such person or persons (if any) as the Board of

Trade may appoint for the purpose; and such examinations shall be conducted in the same manner and shall have the same effect as other examinations under the said Act.

Construction of Section 182 of Principal Act. Stipulations concerning Salvage.

18. It is hereby declared that the 182d section of the Principal Act does not apply to the case of any stipulation made by the seamen belonging to any ship, which, according to the terms of the agreement, is to be employed on salvage service, with respect to the remuneration to be paid to them for salvage services to be rendered by such ship to any other ship or ships.

Payment of Wages to Seamen abroad under Section 209 of Principal Act.

19. The payment of seamen's wages required by the 209th section of the Principal Act shall, whenever it is practicable so to do, be made in money and not by bill; and in cases where payment is made by bill drawn by the master, the owner of the ship shall be liable to pay the amount for which the same is drawn to the holder or endorsee thereof; and it shall not be necessary in any proceeding against the owner upon such bill to prove that the master had authority to draw the same; and any bill purporting to be drawn in pursuance of the said section, and to be endorsed as therein required, if produced out of the custody of the Board of Trade or of the Registrar-General of Seamen, or of any superintendent of any Mercantile Marine Office, shall be received in evidence; and any endorsement on any such bill purporting to be made in pursuance of the said section, and to be signed by one of the functionaries therein mentioned, shall also be received in evidence, and shall be deemed to be *primâ facie* evidence of the facts stated in such endorsement.

Wages and Effects of Deceased Seamen.

20. The 197th section of the Principal Act shall extend to seamen or apprentices who, within the six months immediately preceding their death, have belonged to a *British* ship; and such section shall be construed as if there were inserted in the first line thereof after the words "such seamen or apprentice as last aforesaid" the words "or of any seaman or apprentice who has, within the six months immediately preceding his death, belonged to a *British* ship."

Recovery of Wages, &c., of Seamen Lost with their Ship.

21. The wages of seamen or apprentices who are lost with the ship to which they belong shall be dealt with as follows; (that is to say),

(1.) The Board of Trade may recover the same from the owner of the ship in the same manner in which seamen's wages are recoverable.

(2.) In any proceedings for the recovery of such wages, if it is shown by some official return produced out of the custody of the Registrar-General of Seamen, or by other evidence, that the ship has twelve months or upwards before the institution of the proceeding left a port of departure, and if it is not shown that she has been

heard of within twelve months after such departure, she shall be deemed to have been lost with all hands on board, either immediately after the time she was last heard of or at such later time as the court hearing the case may think probable.

(3.) The production out of the custody of the Registrar-General of Seamen, or of the Board of Trade, of any duplicate agreement or list of the crew made out at the time of the last departure of the ship from the United Kingdom, or of a certificate purporting to be a certificate from a consular or other public officer at any port abroad, stating that certain seamen or apprentices were shipped in the ship from the said port, shall, in the absence of proof to the contrary, be sufficient proof that the seamen or apprentices therein named were on board at the time of the loss.

(4.) The Board of Trade shall deal with such wages in the manner in which they deal with the wages of other deceased seamen and apprentices under the Principal Act.

Relief of Distressed Seamen to be regulated by Board of Trade.

22. Whereas, under the 211th and 212th sections of the Principal Act, and the 16th section of "The Merchant Shipping Act Amendment Act, 1855," provision is made for relieving and sending home seamen found in distress abroad; and whereas doubts are entertained whether power exists under the said sections of making regulations and imposing conditions which are necessary for the prevention of desertion and misconduct, and the undue expenditure of public money: Be it enacted, and it is hereby declared, that the claims of seamen to be relieved or sent home in pursuance of the said sections or any of them shall be subject to such regulations, and dependent on such conditions, as the Board of Trade may from time to time make or impose; and no seaman shall have any right to demand to be relieved or sent home except in the cases and to the extent provided for by such regulations and conditions.

Power of Cancelling Certificate to rest with the Court which hears the Case.

23. The following rules shall be observed with respect to the cancellation and suspension of certificates; (that is to say),

(1.) The power of cancelling or suspending the certificate of a master or mate by the 242d section of the Principal Act conferred on the Board of Trade shall (except in the case provided for by the fourth paragraph of the said section) vest in and be exercised by the Local Marine Board, Magistrates, Naval Court, Admiralty Court, or other court or tribunal by which the case is investigated or tried, and shall not in future vest in or be exercised by the Board of Trade.

(2.) Such power shall extend to cancelling or suspending the certificates of engineers in the same manner as if "certificated engineer" or "certificated engineers" were inserted throughout such section after "master" or "masters."

(3.) Every such board, court, or tribunal shall at the conclusion of the case, or as soon afterwards as possible, state in open court the decision to which they may have come with respect to cancelling or

suspending certificates, and shall in all cases send a full report upon the case, with the evidence, to the Board of Trade, and shall also, if they determine to cancel or suspend any certificate, forward such certificate to the Board of Trade with their report.

(4.) It shall be lawful for the Board of Trade, if they think the justice of the case requires it, to reissue and return any certificate which has been cancelled or suspended, or shorten the time for which it is suspended, or grant a new certificate of the same or any lower grade in place of any certificate which has been cancelled or suspended.

(5.) The 434th and 437th sections of the Principal Act shall be read as if for the word "nautical" were substituted the words "nautical or engineering," and as if for the word "person" and "assessor" respectively were substituted the words "person or persons" and "assessor or assessors" respectively.

(6.) No certificate shall be cancelled or suspended under this section unless a copy of the report, or a statement of the case upon which the investigation is ordered, has been furnished to the owner of the certificate before the commencement of the investigation, nor, in the case of investigations conducted by justices or a stipendiary magistrate, unless one assessor at least expresses his concurrence in the report.

Certificate to be Delivered up.

24. Every master or mate or engineer whose certificate is or is to be suspended or cancelled in pursuance of this Act shall, upon demand of the board, court, or tribunal by which the case is investigated or tried, deliver his certificate to them, or, if it is not demanded by such board, court, or tribunal, shall, upon demand, deliver it to the Board of Trade, or as it directs, and in default shall for each offence incur a penalty not exceeding fifty pounds.

SAFETY (PART IV. OF MERCHANT SHIPPING ACT, 1854).

Enactment of Regulations concerning Lights, Fog Signals, and Sailing Rules in Schedule, Table C.

25. On and after the first day of *June* one thousand eight hundred and sixty-three, or such later day as may be fixed for the purpose by order in council, the regulations contained in the Table marked C. in the Schedule hereto shall come into operation, and be of the same force as if they were enacted in the body of this Act; but Her Majesty may from time to time, on the joint recommendation of the Admiralty and the Board of Trade, by order in council, annul or modify any of the said regulations, or make new regulations in addition thereto or in substitution therefor; and any alterations in or additions to such regulations made in manner aforesaid shall be of the same force as the regulations in the said Schedule.

Regulations to be Published.

26. The Board of Trade shall cause the said regulations, and any alterations therein or additions thereto hereafter to be made, to be printed, and shall

furnish a copy thereof to any owner or master of a ship who applies for the same; and production of the *Gazette* in which any order in council containing such regulations or any alterations therein or additions thereto is published, or of a copy of such regulations, alterations, or additions, signed or purporting to be signed by one of the secretaries or assistant secretaries of the Board of Trade, or sealed or purporting to be sealed with the seal of the Board of Trade, shall be sufficient evidence of the due making and purport of such regulations, alterations, or additions.

Owners and Masters bound to Obey them.

27. All owners and masters of ships shall be bound to take notice of all such regulations as aforesaid, and shall, so long as the same continue in force, be bound to obey them, and to carry and exhibit no other lights and to use no other fog signals than such as are required by the said regulations; and in case of wilful default, the master or the owner of the ship, if it appear that he was in such fault, shall, for each occasion upon which such regulations are infringed, be deemed to be guilty of a misdemeanour.

Breaches of Regulations to imply wilful Default of Person in charge.

28. In case any damage to person or property arises from the non-observance by any ship of any regulation made by or in pursuance of this Act, such damage shall be deemed to have been occasioned by the wilful default of the person in charge of the deck of such ship at the time, unless it is shown to the satisfaction of the court that the circumstances of the case made a departure from the regulation necessary.

If Collision ensues from Breach of Regulations, Ship to be deemed in fault.

29. *If in any case of collision it appears to the court before which the case is tried that such collision was occasioned by the non-observance of any regulation made by or in pursuance of this Act, the ship by which such regulation has been infringed shall be deemed to be in fault, unless it is shown to the satisfaction of the court that the circumstances of the case made a departure from the regulation necessary.* (Repealed by 36 and 37 Vict., cap. 85, sec. 33. See now section 17 of that Act, *post.*)

Inspection for enforcing Regulations.

30. The following steps may be taken in order to enforce compliance with the said regulations; (that is to say),

(1.) The surveyors appointed under the third part of the Principal Act, or such other persons as the Board of Trade may appoint for the purpose, may inspect any ships for the purpose of seeing that such ships are properly provided with lights and with the means of making fog signals in pursuance of the said regulations, and shall for that purpose have the powers given to inspectors by the 14th section of the Principal Act.

(2.) If any such surveyor or person finds that the ship is not so provided, he shall give to the master or owner notice in writing, pointing out the deficiency, and also what is, in his opinion, requisite in order to remedy the same.

(3.) Every notice so given shall be communicated in such manner as the Board of Trade may direct to the collector or collectors of customs at any port or ports from which such ship may seek to clear or at which her transire is to be obtained; and no collector to whom such communication is made shall clear such ship outwards, or grant her a transire, or allow her to proceed to sea, without a certificate under the hand of one of the said surveyors or other persons appointed by the Board of Trade as aforesaid, to the effect that the said ship is properly provided with lights and with the means of making fog signals in pursuance of the said regulations.

Rules for Harbours under Local Acts to continue in force.

31. Any rules concerning the lights or signals to be carried by vessels navigating the waters of any harbour, river, or other inland navigation, or concerning the steps for avoiding collision to be taken by such vessels, which have been or are hereafter made by or under the authority of any local Act, shall continue and be of full force and effect notwithstanding anything in this Act or in the Schedule thereto contained.

In Harbours and Rivers where no such Rules exist they may be made.

32. In the case of any harbour, river, or other inland navigation for which such rules are not and cannot be made by or under the authority of any local Act, it shall be lawful for Her Majesty in council, upon application from the harbour trust or body corporate, if any, owning or exercising jurisdiction upon the waters of such harbour, river, or inland navigation, or, if there is no such harbour trust or body corporate, upon application from persons interested in the navigation of such waters, to make rules concerning the lights or signals to be carried, and concerning the steps for avoiding collision to be taken by vessels navigating such waters; and such rules, when so made, shall, so far as regards vessels navigating such waters, have the same effect as if they were regulations contained in Table C. in the Schedule to this Act, notwithstanding anything in this Act or in the Schedule thereto contained.

In case of Collision one Ship shall Assist the other.

33. *In every case of collision between two ships, it shall be the duty of the person in charge of each ship, if and so far as he can do so without danger to his own ship and crew, to render to the other ship, her master, crew, and passengers (if any), such assistance as may be practicable and as may be necessary in order to save them from any danger caused by the collision.*

In case he fails so to do, and no reasonable excuse for such failure is shown, the collision shall, in the absence of proof to the contrary, be deemed to have been caused by his wrongful act, neglect, or default; and such failure shall also, if proved upon any investigation held under the third or the eighth part of the Principal Act, be deemed to be an act of misconduct or default for which his certificate (if any) may be cancelled or suspended. (Repealed by 36 and 37 Vict., cap. 85, sec. 33. See now section 16 of that Act, *post.*)

Surveys of Steamers.

34. Notwithstanding anything in the 311th section of the Principal Act contained, it shall not be necessary for the surveys of passenger steamers to be made in the months of *April* and *October;* but no declaration shall be given by any surveyor under the fourth part of the said Act for a period exceeding six months, and no certificate issued by the Board of Trade shall remain in force more than six months from the date thereof.

Penalties on Drunken or Disorderly Passengers.

35. The following offenders (that is to say),

(1.) Any person who, being drunken or disorderly, has been on that account refused admission into any duly surveyed passenger steamer by the owner or any person in his employ, and who, after having had the amount of his fare (if he has paid the same) returned or tendered to him, nevertheless persists in attempting to enter such steamer:

(2.) Any person who, being drunken or disorderly on board any such steamer, is requested by the owner or any person in his employ to leave the same at any place in the United Kingdom at which he can conveniently so do, and who, having had the amount of his fare (if he has paid the same) returned or tendered to him, refuses to comply with such request:

On Persons molesting Passengers.

(3.) Any person on board any such steamer who, after warning by the master or any other officer of the steamer, molests or continues to molest any passenger:

Penalties on Persons forcing Way on Board the Ship when full.

(4.) Any person who, after having been refused admission into any such steamer by the owner or any person in his employ on account of such steamer being full, and who, after having had the full amount of his fare (if he has paid the same) returned or tendered to him, nevertheless persists in attempting to enter the same;

And on Persons refusing to quit the Ship when full.

(5.) Any person having got on board any such steamer, who, upon being requested on the like account by the owner or any person in his employ to leave such steamer before the same has quitted the place at which such person got on board, and who, upon having the full amount of his fare (if he has paid the same) returned or tendered to him, refuses to comply with such request:

Penalties for avoiding Payment of Fares.

(6.) Any person who travels or attempts to travel in any such steamer without having previously paid his fare, and with intent to avoid payment thereof:

(7.) Any person who, having paid his fare for a certain distance, knowingly and wilfully proceeds in any such steamer beyond such distance without previously paying the additional fare for the additional distance, and with intent to avoid payment thereof:

(8.) Any person who knowingly and wilfully refuses or neglects, on arriving at the point to which he has paid his fare, to quit any such steamer; and,

(9.) Any person on board any such steamer who does not, when required by the master or other officer of such steamer, either pay his fare, or exhibit such ticket or other receipt (if any) showing the payment of his fare as is usually given to persons travelling by and paying their fare for such steamer:

Shall for every such offence be liable to a penalty not exceeding forty shillings; but such liability shall not prejudice the recovery of any fare payable by him.

Penalty for injuring Steamer or molesting Crew.

36. Any person on board any such steamer who wilfully does or causes to be done anything in such a manner as to obstruct or injure any part of the machinery or tackle of such steamer, or to obstruct, impede, or molest the crew or any of them in the navigation or management of such steamer, or otherwise in the execution of their duty upon or about such steamer, shall for every such offence be liable to a penalty not exceeding twenty pounds.

Manner of Apprehending Offenders.

37. It shall be lawful for the master or other officer of any duly surveyed passenger steamer, and for all persons called by him to his assistance, to detain any person who has committed any offence against any of the provisions of the two last preceding sections of this Act, and whose name and address are unknown to such officer, and to convey such offender with all convenient despatch before some justice without any warrant or other authority than this Act; and such justice shall have jurisdiction to try the case, and shall proceed with all convenient despatch to the hearing and determining of the complaint against such offender.

Provision as to carrying Dangerous Goods.

38. *The provisions of the 329th section of the Principal Act shall extend to foreign ships when within the limits of the United Kingdom.* (Repealed by 36 and 37 Vict., cap. 85, sec. 33, *post.*)

PILOTAGE (PART V. OF MERCHANT SHIPPING ACT, 1854).

Power of Pilotage Authorities to exempt from Compulsory Pilotage

39. Whereas it is enacted by the Principal Act that every pilotage authority shall have power, in manner and subject to the conditions therein mentioned, to do the following things; (that is to say),

To exempt the masters of any ships, or of any classes of ships, from being compelled to employ qualified pilots.

To lower and modify the rates and prices or other remuneration to be demanded and received for the time being by pilots licensed by such authority.

To make arrangements with any other pilotage authority for altering the limits of their respective districts, and for extending the powers of such other authority, and transferring its own powers to such last-mentioned authority.

And whereas it is expedient that increased facilities should be given for effecting the objects contemplated by the said recited enactments, and for further amending the law concerning pilotage, and that in so doing means should be afforded for paying due regard to existing interests and to the circumstances of particular cases: Be it enacted, That it shall be lawful for the Board of Trade, by provisional order, to do the following things; (that is to say),

(1.) Whenever any pilotage authority residing, or having its place of business at one port, has or exercises jurisdiction in matters of pilotage at any other port, to transfer so much of the said jurisdiction as concerns such last-mentioned port to any harbour trust or other body exercising any local jurisdiction in maritime matters at the last-mentioned port, or to any body to be constituted for the purpose by the provisional order, or, in cases where the said pilotage authority is not the *Trinity House of Deptford Strond*, to the said *Trinity House;* or to transfer the whole or any part of the jurisdiction of the said pilotage authority to a new body corporate or body of persons to be constituted for the purpose by the provisional order, so as to represent the interests of the several ports concerned.

(2.) To make the body corporate or persons to whom the said transfer is made a pilotage authority within the meaning of the Principal Act, with such powers for the purpose as may be in the provisional order in that behalf mentioned.

To determine the limits of the district of the pilotage authority to which the transfer of jurisdiction is made.

To sanction a scale of pilotage rates to be taken by the pilots to be licensed by the last-mentioned pilotage authority.

To determine to what extent and under what conditions any pilots already licensed by the former pilotage authority shall continue to act under the new pilotage authority.

To sanction arrangements for the apportionment of any pilotage funds belonging to the pilots licensed by the former pilotage authority between the pilots remaining under the jurisdiction of that authority and the pilots who are transferred to the jurisdiction of the new authority.

To provide for such compensation or superannuation as may be just to officers employed by the former pilotage authority and not continued by the new authority.

(3.) To constitute a pilotage authority and to fix the limits of its district in any place in the United Kingdom where there is no such authority; so, however, that in the new pilotage districts so constituted there shall be no compulsory pilotage, and no restriction on the power of duly qualified persons to obtain licences as pilots.

(4.) To exempt the masters and owners of all ships, or of any classes of ships, from being obliged to employ pilots in any pilotage district or in any part of any pilotage district, or from being obliged to pay for pilots when not employing them in any district or in any part of any pilotage district, and to annex any terms and conditions to such exemptions.

(5.) In cases where the pilotage is not compulsory, and where there is no restriction on the power of duly qualified persons to obtain licences as pilots, to enable any pilotage authority to license pilots and fix pilotage rates for any part of the district within the jurisdiction of such authority for which no such licences or rates now exist.

(6.) In cases where the pilotage is not compulsory, and where there is no restriction on the power of duly qualified persons to obtain licences as pilots, to enable any pilotage authority to raise all or any of the pilotage rates now in force in the district or any part of the district within the jurisdiction of such authority.

(7.) In cases where the pilotage is not compulsory, and where there is no restriction on the number of pilots, or on the power of duly qualified persons to obtain licences as pilots, to give additional facilities for the recovery of pilotage rates and for the prevention of the employment of unqualified pilots.

(8.) To give facilities for enabling duly qualified persons, after proper examination as to their qualifications, to obtain licences as pilots.

Regulations with respect to Manner of making and confirming Provisional Orders.

40. The following rules shall be observed with respect to provisional orders made in pursuance of this Act.

(1.) Application in writing for such order shall be made to the Board of Trade by some persons interested in the pilotage of the district or in the operation of the laws or regulations relating to such pilotage.

(2.) Notice of such application having been made shall be published once at the least in each of two successive weeks in the month immediately succeeding the time of such application in the *Shipping Gazette*, and in some newspaper or newspapers circulating in the county, or, if there are more than one, in the counties adjacent to the pilotage district to be affected by the order.

(3.) The notice so published shall state the objects which it is proposed to effect by the provisional order.

(4.) The Board of Trade on receiving the application shall refer the same to the pilotage authority or authorities of the district, and shall receive and consider any objections which may be made to the proposed provisional order, and shall for that purpose allow at least six weeks to elapse between the time of referring the application to the pilotage authority and the time of making the provisional order.

(5.) The Board of Trade shall, after considering all objections, determine whether to proceed with the provisional order or not; and shall, if they determine to proceed with it, settle it in such manner and

with such terms and conditions, not being inconsistent with the provisions of this Act, as they may think fit: and shall, when they have settled the same, forward copies thereof to the persons making the application and to the pilotage authority or authorities of the district or districts to which it refers.

(6.) No such provisional order shall take effect unless and until the same is confirmed by Parliament; and for the purpose of procuring such confirmation the Board of Trade shall introduce into Parliament a public general bill, or public general bills, in which, or in the schedule to which, the provisional order or provisional orders to be thereby confirmed shall be set out at length.

(7.) If any petition is presented to either House of Parliament against any such provisional order as aforesaid in the progress through Parliament of the bill confirming the same, so much of the bill as relates to the order so petitioned against may be referred to a select committee, and the petitioner shall in such case be allowed to appear and oppose as in the case of private bills.

Extension of Exemptions from Compulsory Pilotage.

41. The masters and owners of ships passing through the limits of any pilotage district in the United Kingdom on their voyages between two places both situate out of such districts shall be exempted from any obligation to employ a pilot within such district, or to pay pilotage rates when not employing a pilot within such district: Provided that the exemption contained in this section shall not apply to ships loading or discharging at any place situate within such district, or at any place situate above such district on the same river or its tributaries.

Arrangement of Pilot Funds for Bristol Channel Pilots.

42. Whereas under the provisions of the *Bristol Channel* Pilotage Act, 1861, pilotage authorities have been established at the ports of *Newport* and *Gloucester*, and the pilots theretofore licensed by the *Trinity House of Deptford Strond* for those parts have ceased to be licensed; and whereas no provision has been made by the said Act for dealing with such interests as the said pilots may have in the *Trinity House* Pilot Fund mentioned in the Principal Act: Be it therefore enacted, that, notwithstanding the said pilots have ceased to be licensed by the *Trinity House*, the *Trinity House* may make such an equitable arrangement in the administration of the *Trinity House* Pilot Fund mentioned in the Principal Act with reference to the interests of the pilots so ceasing to be licensed by them as aforesaid as they may in their discretion think fit.

LIGHTHOUSES (PART VI. OF MERCHANT SHIPPING ACT, 1854).

Lights, &c., under Local Authorities to be inspected, &c., by Trinity House, and other General Authorities.

43. The following rules shall be observed with respect to the inspection of local lighthouses, buoys, and beacons; (that is to say),

(1.) It shall be the duty of each of the general lighthouse authorities, or of such persons as may be authorised by such authority for the

purpose, to inspect all lights, buoys, and beacons situate within the limits of the jurisdiction of such general authority, but belonging to or under the jurisdiction of any local authorities, and to make such inquiries in respect thereof and of the management thereof as they may think fit.

(2.) All officers and others having the care of such lighthouses, buoys, or beacons, or concerned in the management thereof, shall furnish all such information and explanations concerning the same as they may require.

(3.) All such local authorities and their respective officers shall at all times give to the inspecting authority all such returns, explanations, or information concerning the lighthouses, buoys, and beacons within their jurisdiction, and the management thereof, as the said authority may from time to time require.

(4.) The inspecting authority shall communicate to each local authority the results of its inspection of the lighthouses, buoys, and beacons, within its jurisdiction, and shall also make general reports of the results of its inspection of local lighthouses, buoys, and beacons to the Board of Trade; and such reports shall be laid before Parliament.

(5.) The powers given by the 394th section of the Principal Act to the general lighthouse authorities shall, so far as the same are applicable, extend and apply to the case of local buoys and beacons, other than local buoys and beacons placed or erected for temporary purposes, as well as to the case of local lighthouses.

Liability for and Recovery of Light Dues.

44. The following persons shall be liable to pay light dues for any ship in respect of which light dues are payable; (that is to say), the owner or master, or such consignees or agents thereof as have paid or made themselves liable to pay any other charge on account of such ship in the port of her arrival or discharge; and in default of payment such light dues may be recovered in the same manner as penalties of the like amount may be recovered by virtue of the Principal Act.

Powers of Consignees to retain Light Dues paid by them.

45. Every consignee and agent (not being the owner or master) hereby made liable for the payment of light dues in respect of any ship may, out of any moneys in his hands received on account of such ship, or belonging to the owner thereof, retain the amount of all dues so paid by him, together with any reasonable expenses he may have incurred by reason of such payment or liability.

Dues may be levied for Local Lights.

46. If any lighthouse, buoy, or beacon is erected or placed, or reconstructed, repaired, or replaced, by any local authority having jurisdiction in the matter of lighthouses, buoys, or beacons, Her Majesty may, on the application of the said local authority, by order in council fix such dues to be paid to the said local authority in respect of every ship which enters the port or harbour under the jurisdiction of such local authority, or the

estuary wherein such lighthouse, buoy, or beacon is situate, and which passes the said lighthouse, buoy, or beacon, and derives benefit therefrom, as Her Majesty may deem reasonable.

The dues for the time being fixed by any such order in council as aforesaid shall be paid accordingly by the master of the said ship, or other person or persons by whom the said light dues, if levied by one of the general lighthouse authorities, would be payable, and shall be recoverable in the same manner as light dues payable to such general authorities are recoverable.

Application of and Accounts of such Dues.

47. All light dues leviable by any local authority under this Act shall be applied for the purposes of the construction, placing, maintenance, and improvement of the lighthouses, buoys, and beacons in respect of which the same are levied, and for no other purpose.

The local authority to whom the same are paid shall keep a separate account of the receipt and expenditure of such dues, and shall once in every year, or at such other time as the Board of Trade may determine, send a copy of such account to the Board of Trade, and shall send the same in such form, and shall give such particulars in relation thereto, as the Board of Trade may require.

Her Majesty may by order in council from time to time reduce, alter, or increase all or any of such dues, so that the same may, so far as it is practicable, be sufficient, and not more than sufficient, for the payment of the expenses incurred by the local authority in respect of the lighthouses, buoys, or beacons for which the dues are levied.

Construction of Section 431 of Principal Act.

48. The 431st section of the Principal Act shall be read as if after the word "ships" there were inserted the words "and boats."

WRECK AND SALVAGE (PART VIII. OF MERCHANT SHIPPING ACT, 1854).

Extension and Amendment of Summary Jurisdiction in small Salvage Cases.

49. The provisions contained in the eighth part of the Principal Act for giving summary jurisdiction to two justices in salvage cases, and for preventing unnecessary appeals and litigation in such cases, shall be amended as follows; (that is to say),

(1.) Such provisions shall extend to all cases in which the value of the property saved does not exceed one thousand pounds, as well as to the cases provided for by the Principal Act.

(2.) Such provisions shall be held to apply whether the salvage service has been rendered within the limits of the United Kingdom or not.

(3.) It shall be lawful for one of Her Majesty's Principal Secretaries of State, or in *Ireland* for the Lord Lieutenant or other chief governor or governors, to appoint out of the justices for any borough or county a rota of justices by whom jurisdiction in salvage cases shall be exercised.

(4.) When no such rota is appointed, it shall be lawful for the salvers, by writing addressed to the justices' clerk, to name one justice, and for the owner of the property saved in like manner to name the other.

(5.) If either party fails to name a justice within a reasonable time, the case may be tried by two or more justices at petty sessions.

(6.) It shall be competent for any stipendiary magistrate, and also in *England* for any county court judge, in *Scotland* for the sheriff or sheriff-substitute of any county, and in *Ireland* for the recorder of any borough in which there is a recorder, or for the chairman of quarter sessions in any county, to exercise the same jurisdiction in salvage cases as is given to two justices.

(7.) It shall be lawful for one of Her Majesty's Principal Secretaries of State to determine a scale of costs to be awarded in salvage cases by any such justices or court as aforesaid.

(8.) All the provisions of the Principal Act relating to summary proceedings in salvage cases, and to the prevention of unnecessary appeals in such cases, shall, except so far as the same are altered by this Act, extend and apply to all such proceedings, whether under the Principal Act or this Act, or both of such Acts.

Receiver may appoint a Valuer in Salvage Cases.

50. Whenever any salvage question arises, the receiver of wreck for the district may, upon application from either of the parties, appoint a valuer to value the property in respect of which the salvage claim is made, and shall, when the valuation has been returned to him, give a copy of the valuation to both parties; and any copy of such valuation, purporting to be signed by the valuer, and to be attested by the receiver, shall be received in evidence in any subsequent proceeding; and there shall be paid in respect of such valuation, by the party applying for the same, such fee as the Board of Trade may direct.

Jurisdiction of Court of Session in Salvage Cases.

51. The words "Court of Session" in the four hundred and sixty-eighth section of the Principal Act, shall be deemed to mean and include either division of the Court of Session or the Lord Ordinary officiating on the bills during vacation.

Delivery of Wreck by Receiver not to prejudice Title.

52. Upon delivery of wreck or of the proceeds of wreck by any receiver to any person in pursuance of the provisions of the eighth part of the Principal Act, such receiver shall be discharged from all liability in respect thereof, but such delivery shall not be deemed to prejudice or affect any question concerning the right or title to the said wreck which may be raised by third parties, nor shall any such delivery prejudice or affect any question concerning the title to the soil on which the wreck may have been found.

Crown Rights to Wreck.

53. Whereas by the Principal Act it is provided that the proceeds of wreck, if the same is not claimed by the owner within a year, and if no

person other than Her Majesty, her heirs and successors, is proved to be entitled thereto, shall, subject to certain deductions, be paid into the receipt of Her Majesty's Exchequer in such manner as the Commissioners of the Treasury may direct, and that the same shall be carried to and form part of the Consolidated Fund of the United Kingdom:

And whereas doubts have been entertained whether the said last-recited provision is consistent with the arrangements concerning the hereditary revenues of the Crown effected by the Act of the first year of Her present Majesty, chapter two: And whereas doubts have also been entertained whether due provision is made by the said Act for paying to the revenues of the Duchies of *Lancaster* and *Cornwall* respectively such of the said proceeds as may belong to those Duchies:

It is hereby declared, that such of the said proceeds of wreck as belong to Her Majesty in right of her crown shall, during the life of Her present Majesty (whom God long preserve), be carried to and form part of the Consolidated Fund of the United Kingdom, and shall, after the decease of Her present Majesty (whom God long preserve), be payable and paid to Her Majesty's heirs and successors.

And it is hereby further declared, that such of the said proceeds of wreck as belong to Her Majesty in right of her Duchy of *Lancaster* shall be paid to the Receiver-General of the said Duchy or his sufficient deputy or deputies as part of the revenues of the said Duchy, and be dealt with accordingly.

And it is hereby further declared and enacted, that the provision in the Principal Act contained regarding the sale of unclaimed wreck to which no owner establishes his claim within the period of one year, and to which no admiral, vice-admiral, lord of any manor, or person other than Her Majesty, her heirs and successors, is proved to be entitled, is intended and shall be construed to apply to wreck of the sea belonging to Her Majesty, her heirs and successors, in respect of the Duchy of *Cornwall*, or to the Duke of *Cornwall* for the time being in respect of his Duchy of *Cornwall*. but that the proceeds of such wreck shall, subject to such deductions as are in the same Act mentioned, form part of the revenues of the Duchy of *Cornwall*, and be dealt with accordingly.

LIABILITY OF SHIPOWNERS (PART IX. OF MERCHANT SHIPPING ACT, 1854).

Shipowner's Liability limited.

54. The owners of any ship, whether *British* or foreign, shall not, in cases where all or any of the following events occur without their actual fault or privity (that is to say),

(1.) Where any loss of life or personal injury is caused to any person being carried in such ship:

(2.) Where any damage or loss is caused to any goods, merchandise, or other things whatsoever on board any such ship:

(3.) Where any loss of life or personal injury is by reason of the improper navigation of such ship as aforesaid caused to any person carried in any other ship or boat:

(4.) Where any loss or damage is by reason of the improper navigation of such ship as aforesaid caused to any other ship or boat, or to

any goods, merchandise, or other things whatsoever on board any other ship or boat:

Be answerable in damages in respect of loss of life or personal injury, either alone or together with loss or damage to ships, boats, goods, merchandise, or other things, to an aggregate amount exceeding fifteen pounds for each ton of their ship's tonnage; nor in respect of loss or damage to ships, goods, merchandise, or other things, whether there be in addition loss of life or personal injury or not, to an aggregate amount exceeding eight pounds for each ton of the ship's tonnage; such tonnage to be the registered tonnage in the case of sailing ships, and in the case of steam-ships the gross tonnage without deduction on account of engine room.

In the case of any foreign ship which has been or can be measured according to *British* law, the tonnage as ascertained by such measurement shall, for the purposes of this section, be deemed to be the tonnage of such ship.

In the case of any foreign ship which has not been and cannot be measured under *British* law, the surveyor-general of tonnage in the United Kingdom, and the chief measuring officer in any *British* possession abroad, shall, on receiving from or by direction of the court hearing the case such evidence concerning the dimensions of the ship as it may be found practicable to furnish, give a certificate under his hand, stating what would in his opinion have been the tonnage of such ship if she had been duly measured according to *British* law, and the tonnage so stated in such certificate shall, for the purposes of this section, be deemed to be the tonnage of such ship.

Limitation of Invalidity of Insurances.

55. Insurances effected against any or all of the events enumerated in the section last preceding, and occurring without such actual fault or privity as therein mentioned, shall not be invalid by reason of the nature of the risk.

Proof of Passengers on Board lost Ship.

56. In any proceeding under the 506th section of the Principal Act, or any Act amending the same, against the owner of any ship or share therein in respect of loss of life, the master's list or the duplicate list of passengers delivered to the proper officer of customs under the 16th section of "The Passengers Act, 1854," shall, in the absence of proof to the contrary, be sufficient proof that the persons in respect of whose death any such prosecution or proceeding is instituted were passengers on board such ship at the time of their deaths.

ARRANGEMENTS CONCERNING LIGHTS, SAILING RULES, SALVAGE, AND MEASUREMENT OF TONNAGE IN THE CASE OF FOREIGN SHIPS.

Foreign Ships in British Jurisdiction to be subject to Regulations in Table C. in Schedule.

57. Whenever foreign ships are within *British* jurisdiction, the regulations for preventing collision contained in Table C. in the Schedule to this Act, or such other regulations for preventing collision as are for the time being in force under this Act, and all provisions of this Act relating to

such regulations, or otherwise relating to collisions, shall apply to such foreign ships; and in any cases arising in any *British* court of justice concerning matters happening within *British* jurisdiction, foreign ships shall, so far as regards such regulations and provisions, be treated as if they were *British* ships.

Regulations, when adopted by a Foreign Country, may be applied to its Ships on the High Seas.

58. Whenever it is made to appear to Her Majesty that the Government of any foreign country is willing that the regulations for preventing collision contained in Table C. in the Schedule to this Act, or such other regulations for preventing collision as are for the time being in force under this Act, or any of the said regulations, or any provisions of this Act relating to collisions, should apply to the ships of this country when beyond the limits of *British* jurisdiction, Her Majesty may, by order in council, direct that such regulations, and all provisions of this Act which relate to such regulations, and all such other provisions as aforesaid, shall apply to the ships of the said foreign country, whether within *British* jurisdiction or not.

Provision concerning Salvage of Life may, with the consent of any Foreign Country, be applied to its Ships on the High Seas.

59. Whenever it is made to appear to Her Majesty that the Government of any foreign country is willing that salvage shall be awarded by *British* courts for services rendered in saving life from any ship belonging to such country when such ship is beyond the limits of *British* jurisdiction, Her Majesty may by order in council direct that the provisions of the Principal Act and of this Act, with respect to salvage for services rendered in saving life from *British* ships, shall in all *British* courts be held to apply to services rendered in saving life from the ships of such foreign country, whether such services are rendered within *British* jurisdiction or not.

Ships of Foreign Countries adopting the Rule for Measurement of Tonnage need not be re-measured in this Country.

60. Whenever it is made to appear to Her Majesty that the rules concerning the measurement of tonnage of merchant ships for the time being in force under the Principal Act have been adopted by the Government of any foreign country, and are in force in that country, it shall be lawful for Her Majesty by order in council to direct that the ships of such foreign country shall be deemed to be of the tonnage denoted in their certificates of registry or other national papers; and thereupon it shall no longer be necessary for such ships to be re-measured in any port or place in Her Majesty's dominions, but such ships shall be deemed to be of the tonnage denoted in their certificates of registry or other papers, in the same manner, to the same extent, and for the same purposes, in, to, and for which the tonnage denoted in the certificates of registry of *British* ships is deemed to be the tonnage of such ships.

Effect of Order in Council.

61. Whenever an order in council has been issued under this Act, applying any provision of this Act or any regulation made by or in pursu-

ance of this Act to the ships of any foreign country, such ships shall in all cases arising in any *British* court be deemed to be subject to such provision or regulation, and shall for the purpose of such provision or regulation be treated as if they were *British* ships.

Orders in Council may be limited as to Time, and qualified.

62. In issuing any order in council under this Act, Her Majesty may limit the time during which it is to remain in operation, and may make the same subject to such conditions and qualifications, if any, as may be deemed expedient, and thereupon the operation of the said order shall be limited and modified accordingly.

Orders in Council may be Revoked and Altered.

63. Her Majesty may by order in council from time to time revoke or alter any order previously made under this Act.

Orders in Council to be published in London Gazette.

64. Every order in council to be made under this Act shall be published in the *London Gazette* as soon as may be after the making thereof; and the production of a copy of the *London Gazette* containing such order shall be received in evidence, and shall be proof that the order therein published has been duly made and issued; and it shall not be necessary to plead such order specially.

LEGAL PROCEDURE.

20 and 21 Vict., cap. 43, sec. 3, not to apply to Proceedings under Board of Trade or this Act, &c.

65. Nothing in the third section of the Act passed in the twentieth and twenty-first years of the reign of Her present Majesty, chapter forty-three, except so much thereof as provides for the payment of any fees that may be due to the clerk of the justices, shall be deemed to apply or extend to any proceeding under the direction of the Board of Trade, or under or by virtue of the provisions of the Principal Act or this Act, or any Act amending the same.

DELIVERY OF GOODS AND LIEN FOR FREIGHT.

Interpretation of Terms.

66. The following terms used in the sections of this Act hereinafter contained shall have the respective meanings hereby assigned to them, if not inconsistent with the context of subject matter; (that is to say),

The word "report" shall mean the report required by the customs laws to be made by the master of any importing ship.

The word "entry" shall mean the entry required by the customs laws to be made for the landing or discharge of goods from an importing ship.

The word "goods" shall include every description of wares and merchandise.

The word "wharf" shall include all wharves, quays, docks, and premises in or upon which any goods when landed from ships may be lawfully placed.

The word "warehouse" shall include all warehouses, buildings, and premises in which goods when landed from ships may be lawfully placed.

The expression "wharf owner" shall mean the occupier of any wharf, as hereinbefore defined.

The expression "warehouse owner" shall mean the occupier of any warehouse, as hereinbefore defined.

The word "shipowner" shall include the master of the ship, and every other person authorised to act as agent for the owner, or entitled to receive the freight, demurrage, or other charges payable in respect of such ship.

The expression "owner of goods" shall include every person who is for the time being entitled, either as owner or agent for the owner, to the possession of the goods, subject in the case of a lien, if any, to such lien.

Power to Shipowner to enter and land Goods in default of entry and landing by Owner of Goods.

67. Where the owner of any goods imported in any ship from foreign parts into the United Kingdom fails to make entry thereof, or having made entry thereof, to land the same or take delivery thereof, and to proceed therewith with all convenient speed, by the times severally hereinafter mentioned, the shipowner may make entry of and land or unship the said goods at the times, in the manner, and subject to the conditions following; (that is to say),

(1.) If a time for the delivery of the goods is expressed in the charter-party, bill of lading, or agreement, then at any time after the time so expressed.

(2.) If no time for the delivery of the goods is expressed in the charter-party, bill of lading, or agreement, then at any time after the expiration of seventy-two hours, exclusive of a *Sunday* or holiday, after the report of the ship.

(3.) If any wharf or warehouse is named in the charter-party, bill of lading, or agreement, as the wharf or warehouse where the goods are to be placed, and if they can be conveniently there received, the shipowner in landing them by virtue of this enactment shall cause them to be placed on such wharf or in such warehouse.

(4.) In other cases the shipowner in landing goods by virtue of this enactment shall place them in or on some wharf or warehouse on or in which goods of a like nature are usually placed; such wharf or warehouse being, if the goods are dutiable, a wharf or warehouse duly approved by the Commissioners of Customs for the landing of dutiable goods.

(5.) If at any time before the goods are landed or unshipped the owner of the goods is ready and offers to land or take delivery of the same, he shall be allowed so to do, and his entry shall in such case be preferred to any entry which may have been made by the shipowner.

(6.) If any goods are, for the purpose of convenience in assorting the same, landed at the wharf where the ship is discharged, and the owner of the goods at the time of such landing has made entry and is ready and offers to take delivery thereof, and to convey the same to some other wharf or warehouse, such goods shall be assorted at landing, and shall, if demanded, be delivered to the owner thereof within twenty-four hours after assortment; and the expense of and consequent on such landing and assortment shall be borne by the shipowner.

(7.) If at any time before the goods are landed or unshipped the owner thereof has made entry for the landing and warehousing thereof at any particular wharf or warehouse other than that at which the ship is discharging, and has offered and been ready to take delivery thereof, and the shipowner has failed to make such delivery, and has also failed at the time of such offer to give the owner of the goods correct information of the time at which such goods can be delivered, then the shipowner shall, before landing or unshipping such goods under the power hereby given to him, give to the owner of the goods or of such wharf or warehouse as last aforesaid twenty-four hours' notice in writing of his readiness to deliver the goods, and shall, if he lands or unships the same without such notice, do so at his own risk and expense.

If, when Goods are Landed, the Shipowner gives Notice for that Purpose, the Lien for Freight is to continue.

68. If, at the time when any goods are landed from any ship, and placed in the custody of any person as a wharf or warehouse owner, the shipowner gives to the wharf or warehouse owner notice in writing that the goods are to remain subject to a lien for freight or other charges payable to the shipowner to an amount to be mentioned in such notice, the goods so landed shall, in the hands of the wharf or warehouse owner, continue liable to the same lien, if any, for such charges as they were subject to before the landing thereof; and the wharf or warehouse owner receiving such goods shall retain them until the lien is discharged as hereinafter mentioned, and shall, if he fails so to do, make good to the shipowner any loss thereby occasioned to him.

Lien to be discharged on Proof of Payment.

69. Upon the production to the wharf or warehouse owner of a receipt for the amount claimed as due, and delivery to the wharf or warehouse owner of a copy thereof or of a release of freight from the shipowner, the said lien shall be discharged.

Lien to be discharged on Deposit with Warehouse Owner.

70. The owner of the goods may deposit with the wharf or warehouse owner a sum of money equal in amount to the sum so claimed as aforesaid by the shipowner, and thereupon the lien shall be discharged; but without prejudice to any other remedy which the shipowner may have for the recovery of the freight.

Warehouse Owner may at the End of Fifteen Days, if no Notice is given, pay Deposit to Shipowner.

71. If such deposit as aforesaid is made with the wharf or warehouse owner, and the person making the same does not within fifteen days after making it give to the wharf or warehouse owner notice in writing to retain it, stating in such notice the sum, if any, which he admits to be payable to the shipowner, or, as the case may be, that he does not admit any sum to be so payable, the wharf or warehouse owner may at the expiration of such fifteen days pay the sum so deposited over to the shipowner, and shall by such payment be discharged from all liability in respect thereof.

Course to be taken if Notice to Retain is given.

72. If such deposit as aforesaid is made with the wharf or warehouse owner, and the person making the same does within fifteen days after making it give to the wharf or warehouse owner such notice in writing as aforesaid, the wharf or warehouse owner shall immediately apprise the shipowner of such notice, and shall pay or tender to him out of the sum deposited, the sum, if any, admitted by such notice to be payable, and shall retain the remainder or balance, or, if no sum is admitted to be payable, the whole of the sum deposited, for thirty days from the date of the said notice; and at the expiration of such thirty days, unless legal proceedings have in the meantime been instituted by the shipowner against the owner of the goods to recover the said balance or sum or otherwise for the settlement of any disputes which may have arisen between them concerning such freight or other charges as aforesaid, and notice in writing of such proceedings has been served on him, the wharf or warehouse owner shall pay the said balance or sum over to the owner of the goods, and shall by such payment be discharged from all liability in respect thereof.

After Ninety Days Warehouse Owner may sell Goods by Public Auction.

73. If the lien is not discharged, and no deposit is made as hereinbefore mentioned, the wharf or warehouse owner may, and, if required by the shipowner, shall, at the expiration of ninety days from the time when the goods were placed in his custody, or, if the goods are of a perishable nature, at such earlier period as he in his discretion thinks fit, sell by public auction, either for home use or exportation, the said goods or so much thereof as may be necessary to satisfy the charges hereinafter mentioned.

Notices of Sale to be given.

74. Before making such sale the wharf or warehouse owner shall give notice thereof by advertisement in two newspapers circulating in the neighbourhood, or in one daily newspaper published in *London* and in one local newspaper, and also, if the address of the owner of the goods has been stated on the manifest of the cargo, or on any of the documents which

have come into the possession of the wharf or warehouse owner, or is otherwise known to him, give notice of the sale to the owner of the goods by letter sent by the post; but the title of a *bonâ fide* purchaser of such goods shall not be invalidated by reason of the omission to send notice as hereinbefore mentioned, nor shall any such purchaser be bound to inquire whether such notice has been sent.

Moneys arising from Sale how to be applied.

75. In every case of any such sale as aforesaid the wharf or warehouse owner shall apply the moneys received from the sale as follows, and in the following order:

(1.) If the goods are sold for home use, in payment of any customs or excise duties owing in respect thereof.

(2.) In payment of the expenses of the sale.

(3.) In the absence of any agreement between the wharf or warehouse owner and the shipowner concerning the priority of their respective charges, in payment of the rent, rates, and other charges due to the wharf or warehouse owner in respect of the said goods.

(4.) In payment of the amount claimed by the shipowner as due for freight or other charges in respect of the said goods.

(5.) But in case of any agreement between the wharf or warehouse owner and the shipowner concerning the priority of their respective charges, then such charges shall have priority according to the terms of such agreement.

And the surplus, if any, shall be paid to the owner of the goods.

Warehouse Owner's Rent and Expenses.

76. Whenever goods are placed in the custody of a wharf or warehouse owner under the authority of this Act, the said wharf or warehouse owner shall be entitled to rent in respect of the same, and shall also have power from time to time, at the expense of the owner of the goods, to do all such reasonable acts as in the judgment of the said wharf or warehouse owner are necessary for the proper custody and preservation of the said goods, and shall have a lien on the said goods for the said rent and expenses.

Warehouse Owner's Protection.

77. Nothing in this Act contained shall compel any wharf or warehouse owner to take charge of any goods which he would not be liable to take charge of if this Act had not passed; nor shall he be bound to see to the validity of any lien claimed by any shipowner under this Act.

Saving Powers under Local Acts.

78. Nothing in this Act contained shall take away or abridge any powers given by any local Act to any harbour trust, body corporate, or persons whereby they are enabled to expedite the discharge of ships or the landing or delivery of goods; nor shall anything in this Act contained take away or diminish any rights or remedies given to any shipowner or wharf or warehouse owner by any local Act.

SCHEDULE referred to in Act.

TABLE A. (Sect. 2.)

ENACTMENTS TO BE REPEALED.

To Act.	Title of Act.	Extent of Repeal.
8 and 9 Vict., cap. 91.	An Act for the Warehousing of Goods.	Section 51 to be repealed immediately on the passing of this Act.
16 and 17 Vict., cap. 107.	Customs Consolidation Act, 1853.	The last Proviso in Section 74, and Sections 170, 171, and 172 to be repealed immediately on the passing of this Act.
17 and 18 Vict., cap. 104.	Merchant Shipping Act, 1854.	Sections 295, 296, 297, 298, 299, to be repealed from the Date at which the Regulations contained in Table C. in this Schedule come into operation. Sections 300, 322, 323, 504, and 505 to be repealed immediately on the passing of this Act.
19 and 20 Vict., cap. 75.	An Act for the further Alteration and Amendment of the Laws and Duties of Customs.	Section 8 to be repealed immediately on the passing of this Act.

TABLE B. (Sect. 7.)

FEES TO BE CHARGED ON EXAMINATION OF ENGINEERS.

For a First-class Engineer's Certificate	£2 0 0
For a Second-class Engineer's Certificate	1 0 0

TABLE C. (Sect 25.)

REGULATIONS FOR PREVENTING COLLISIONS AT SEA.

CONTENTS.

Article 1. Preliminary.

Rules concerning Lights.

2. Lights to be carried as follows :—
3. Lights for Steam-Ships.
4. Lights for Steam-Tugs.
5. Lights for Sailing Ships.
6. Exceptional Lights for small Sailing Vessels.
7. Lights for Ships at Anchor.
8. Lights for Pilot Vessels.
9. Lights for Fishing Vessels and Boats.

Rules concerning Fog Signals.

10. Fog Signals.

Steering and Sailing Rules.

11. Two Sailing Ships Meeting.
12. Two Sailing Ships Crossing.
13. Two Ships under Steam Meeting.
14. Two Ships under Steam Crossing.
15. Sailing Ship and Ship under Steam.
16. Ships under Steam to slacken Speed.
17. Vessels overtaking other Vessels.
18. Construction of Articles 12, 14, 15, and 17.
19. Proviso to save special Cases.
20. No Ship under any circumstances to neglect proper precautions.

Preliminary.

Art. 1. In the following rules every steam-ship which is under sail and not under steam is to be considered a sailing ship; and every steam-ship which is under steam, whether under sail or not, is to be considered a ship under steam.

Rules concerning Lights.

Art. 2. The lights mentioned in the following articles, and no others, shall be carried in all weathers between sunset and sunrise.

Art. 3. Sea-going steam-ships when under weigh shall carry :—

(*a.*) *At the foremast head*, a bright white light so fixed as to show an uniform and unbroken light over an arc of the horizon of twenty points of the compass, so fixed as to throw the light ten points on each side of the ship, viz., from right ahead to two points abaft the beam on either side, and of such a character as to be visible on a dark night with a clear atmosphere at a distance of at least five miles.

(*b.*) *On the starboard side*, a green light so constructed as to throw an uniform and unbroken light over an arc of the horizon of ten points of the compass, so fixed as to throw the light from right ahead to two points abaft the beam on the starboard side, and of such a character as to be visible on a dark night with a clear atmosphere at a distance of at least two miles.

(*c.*) *On the port side*, a red light, so constructed as to show an uniform unbroken light, over an arc of the horizon of ten points of the compass, so fixed as to throw the light from right ahead to two points abaft the beam on the port side, and of such a character as to be visible on a dark night with a clear atmosphere at a distance of at least two miles.

(*d.*) The said green and red side-lights shall be fitted with inboard screens projecting at least three feet forward from the light, so as to prevent these lights from being seen across the bow.

Art. 4. Steam-ships when towing other ships shall carry two bright white mast-head lights vertically, in addition to their side-lights, so as to distinguish them from other steam-ships. Each of these mast-head lights shall be of the same construction and character as the mast-head lights which other steam-ships are required to carry.

Art. 5. Sailing ships under weigh or being towed shall carry the same lights as steam-ships under weigh, with the exception of the white mast-head lights, which they shall never carry.

Art. 6. Whenever, as in the case of small vessels during bad weather, the green and red lights cannot be fixed, these lights shall be kept on deck on their respective sides of the vessel ready for instant exhibition, and shall, on the approach of or to other vessels, be exhibited on their respective sides in sufficient time to prevent collision, in such manner as to make them most visible, and so that the green light shall not be seen on the port side, nor the red light on the starboard side.

To make the use of these portable lights more certain and easy, they shall each be painted outside with the colour of the light they respectively contain, and shall be provided with suitable screens.

Art. 7. Ships, whether steam-ships or sailing ships, when at anchor in roadsteads or fairways, shall between sunrise and sunset exhibit, where it can best be seen, but at a height not exceeding twenty feet above the hull, a white light in a globular lantern of eight inches in diameter, and so constructed as to show a clear, uniform, and unbroken light visible all round the horizon, and at a distance of at least one mile.

Art. 8. Sailing pilot vessels shall not carry the lights required for other sailing vessels, but shall carry a white light at the mast-head visible all round the horizon,—and shall also exhibit a flare-up light every fifteen minutes.

Art. 9. Open fishing-boats and other open boats shall not be required to carry side-lights required for other vessels; but shall, if they do not carry such lights, carry a

lantern having a green slide on the one side and a red slide on the other side; and on the approach of or to other vessels such lantern shall be exhibited in sufficient time to prevent collision, so that the green light shall not be seen on the port side nor the red light on the starboard side.

Fishing vessels and open boats when at anchor or attached to their nets and stationary, shall exhibit a bright white light.

Fishing vessels and open boats shall, however, not be prevented from using a flare-up in addition if considered expedient.

Rules concerning Fog Signals.

Art. 10. Whenever there is a fog, whether by day or night, the fog signals described below shall be carried and used, and shall be sounded at least every five minutes, viz.—

(*a.*) Steam-ships under weigh shall use a steam-whistle placed before the funnel not less than eight feet from the deck.

(*b.*) Sailing ships under weigh shall use a fog-horn.

(*c.*) Steam-ships and sailing ships when not under weigh shall use a bell.

Steering and Sailing Rules.

Art. 11. If two sailing ships are meeting end on, or nearly end on, so as to involve risk of collision, the helms of both shall be put to port, so that each may pass on the port side of the other.

Art. 12. When two sailing ships are crossing so as to involve risk of collision, then if they have the wind on different sides, the ship with the wind on the port side shall keep out of the way of the ship with the wind on the starboard side, except in the case in which the ship with the wind on the port side is close hauled and the other ship free, in which case the latter ship shall keep out of the way; but if they have the wind on the same side, or if one of them has the wind aft, the ship which is to windward shall keep out of the way of the ship which is to leeward.

Art. 13. If two ships under steam are meeting end on, or nearly end on, so as to involve risk of collision, the helms of both shall be put to port, so that each may pass on the port side of the other.

Art. 14. If two ships under steam are crossing so as to involve risk of collision, the ship which has the other on her own starboard side shall keep out of the way of the other.

Art. 15. If two ships, one of which is a sailing ship and the other a steam-ship, are proceeding in such directions as to involve risk of collision, the steam-ship shall keep out of the way of the sailing ship.

Art. 16. Every steam-ship, when approaching another ship so as to involve risk of collision, shall slacken her speed, or, if necessary, stop and reverse; and every steam-ship shall, when in a fog, go at a moderate speed.

Art. 17. Every vessel overtaking any other vessel shall keep out of the way of the said last-mentioned vessel.

Art. 18. Where by the above rules one of two ships is to keep out of the way, the other shall keep her course, subject to the qualifications contained in the following Article.

Art. 19. In obeying and construing these rules, due regard must be had to all dangers of navigation; and due regard must also be had to any special circumstances which may exist in any particular case rendering a departure from the above rules necessary in order to avoid immediate danger.

Art. 20. Nothing in these rules shall exonerate any ship or the owner or master or crew thereof from the consequences of any neglect to carry lights or signals, or of any neglect to keep a proper look-out, or of the neglect of any precaution which may be required by the ordinary practice of seamen or by the special circumstances of the case.

APPENDIX No. IV.

AN ACT TO AMEND THE MERCHANT SHIPPING ACT, 1854.

30° AND 31° VICTORIÆ, CAP. 124. [20TH AUGUST 1867.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short Title.

1. This Act may be cited as "The Merchant Shipping Act, 1867," and shall be construed with and as part of the Merchant Shipping Act, 1854, hereinafter termed the Principal Act.

Commencement of Act.

2. This Act shall come into operation on the first day of *January*, one thousand eight hundred and sixty-eight, but shall not apply to any ship which belongs to the United Kingdom and is absent therefrom at the time when this Act comes into operation until such ship has returned to the United Kingdom.

Sections 224, 227, and 231 of 17 and 18 Vict., cap. 104, repealed.

3. The two hundred and twenty-fourth, two hundred and twenty-seventh, and two hundred and thirty-first sections of the Principal Act are hereby repealed.

Lime or Lemon Juice and other Anti-scorbutics to be provided and kept on board certain Ships.

4. The following rules shall be observed with respect to medicines, medical stores, and anti-scorbutics; (that is to say),

(1.) The Board of Trade shall from time to time issue and cause to be published scales of medicines and medical stores suitable for different ships and voyages, and shall also prepare or sanction a book or books containing instructions for dispensing the same.

(2.) The owners of every ship navigating between the United Kingdom and any place out of the same shall provide and cause to be kept on board such ship a supply of medicines and medical stores in accordance with the scale appropriate to the said ship, and also a

copy of the said book or of one of the said books containing instructions.

(3.) No lime or lemon juice shall be deemed fit and proper to be taken on board any such ship, for the use of the crew or passengers thereof, unless the same has been obtained from a bonded warehouse for and to be shipped as stores; and no lime or lemon juice shall be so obtained or delivered from any warehouse as aforesaid unless the same is shown, by a certificate under the hand of an inspector appointed by the Board of Trade, to be proper for use on board ship, such certificate to be given upon inspection of a sample after deposit of the said lime or lemon juice in the warehouse; nor unless the same contains fifteen *per centum* of proper and palatable proof spirits, to be approved by such inspector, or by the proper officer of customs, and to be added before or immediately after the inspection thereof; nor unless the same is packed in such bottles, at such time and in such manner, and is labelled in such manner, as the Commissioners of Customs may direct: provided that when any such lime or lemon juice is deposited in any bonded warehouse, and has been approved as aforesaid by the said inspector, the said spirits, or so much of the said spirits as is necessary to make up fifteen *per centum*, may be added in such warehouse, without payment of any duty thereon; and when any spirit has been added to any lime or lemon juice, and the same has been labelled as aforesaid, it shall be deposited in the warehouse for delivery as ship's stores only, upon such terms and subject to such regulations of the Commissioners of Customs as are applicable to the delivery of ship's stores from the warehouse.

(4.) The master or owner of every such foreign-going ship (except those bound to *European* ports, or to ports in the *Mediterranean Sea*, and also except such ships or classes of ships bound to ports on the eastern coast of *America*, north of the thirty-fifth degree of north latitude, and to any islands or places in the *Atlantic Ocean*, north of the same limit, as the Board of Trade may from time to time exempt from this enactment), shall provide and cause to be kept on board such ship a sufficient quantity of lime or lemon juice from the warehouse, duly labelled as aforesaid, such labels to remain intact until twenty-four hours at least after such ship shall have left her port of departure on her foreign voyage, or a sufficient quantity of such other anti-scorbutics, if any, of such quality, and composed of such materials, and packed and kept in such manner, as Her Majesty by order in council may from time to time direct.

(5.) The master of every such ship as last aforesaid shall serve or cause to be served out the lime or lemon juice with sugar (such sugar to be in addition to any sugar required by the articles) or other such anti-scorbutics as aforesaid to the crew so soon as they have been at sea for ten days, and during the remainder of the voyage, except during such time as they are in harbour and are there supplied with fresh provisions; the lime or lemon juice and sugar to be served out daily at the rate of an ounce each per day to each member of the crew, and to be mixed with a due proportion of water before being served out, or the other anti-scorbutics, if any, at such times

and in such quantities as Her Majesty by order in council may from time to time direct.

(6.) If at any time when such lime or lemon juice or anti-scorbutics is or are so served out as aforesaid any seaman or apprentice refuses or neglects to take the same, such neglect or refusal shall be entered in the official log-book in the manner provided by the two hundred and eighty-first section of the Principal Act, and shall be signed by the master and by the mate or some other of the crew, and also by the surgeon or medical practitioner on board, if any.

And if in any such ship as aforesaid such medicines, medical stores, book of instructions, lime or lemon juice, sugar, or anti-scorbutics as are hereinbefore required are not provided, packed, and kept on board as hereinbefore required, the owner or master shall be deemed to be in fault, and shall for each default incur a penalty not exceeding twenty pounds, unless he can prove that the non-compliance with the above provisions, or any of them, was not caused through any inattention, neglect, or wilful default on his part; and if the lime or lemon juice and sugar or other anti-scorbutics are not served out in the case and manner hereinbefore directed, or if entry is not made in the official log in the case and manner hereinbefore required, the master shall be deemed to be in fault, and shall for each default incur a penalty not exceeding five pounds, unless he can prove that the non-compliance with the above provisions, or any of them, did not arise through any neglect, omission, or wilful default on his part; and if in any case it is proved that some person other than the master or owner is in default in any case under this section, then such other person shall be liable to a penalty not exceeding twenty pounds.

Penalty for Selling, &c., Medicines, &c., of bad quality.

5. Any person who manufactures, sells, or keeps or offers for sale any such medicines or medical stores as aforesaid which are of bad quality, shall for each such offence incur a penalty not exceeding twenty pounds.

Power to Governors, &c., to make Regulations as to Supply of Lime or Lemon Juice, &c.

6. In any *British* possession out of the United Kingdom the governor or officer administering the government for the time being shall, subject to the laws of such possession, have power to make regulations concerning the supply within such possession of lime or lemon juice and anti-scorbutics for the use of ships; and any lime or lemon juice or anti-scorbutics duly supplied in accordance with any such regulations shall be deemed to be fit and proper for the use of ships.

Seamen's Expenses in Case of Illness through Neglect of Owner or Master to be paid by them.

7. Whenever it is shown that any seaman or apprentice who is ill has, through the neglect of the master or owner, not been provided with proper food and water according to his agreement, or with such accommodation, medicines, medical stores, or anti-scorbutics as are required by the

Principal Act or by this Act, then, unless it can be shown that the illness has been produced by other causes, the owner or master shall be liable to pay all expenses properly and necessarily incurred by reason of such illness (not exceeding in the whole three months' wages), either by such seaman himself, or by Her Majesty's Government, or any officer of Her Majesty's Government, or by any parochial or other local authority on his behalf, and such expenses may be recovered in the same way as if they were wages duly earned: provided that this enactment shall not operate so as to affect any further liability of any such owner or master for such neglect, or any remedy which any seaman already possesses.

Forfeiture of Wages, &c., of Seaman when Illness caused by his own Default.

8. Where a seaman is by reason of illness incapable of performing his duty, and it is proved that such illness has been caused by his own wilful act or default, he shall not be entitled to wages for the time during which he is by reason of such illness incapable of performing his duty.

Place appropriated to Seamen to have a certain Space for each Man, and to be properly constructed and kept clear.

9. The following rules shall be observed with respect to accommodation on board *British* ships; (that is to say),

(1.) Every place in any ship occupied by seamen or apprentices, and appropriated to their use, shall have for every such seaman or apprentice a space of not less than seventy-two cubic feet, and of not less than twelve superficial feet, measured on the deck or floor of such place.

(2.) Every such place shall be such as to make the space aforesaid available for the proper accommodation of the men who are to occupy it, shall be securely constructed, properly lighted and ventilated, properly protected from weather and sea, and as far as practicable properly shut off and protected from effluvium which may be caused by cargo or bilge water.

(3.) No such place as aforesaid shall be deemed to be such as to authorise a deduction from registered tonnage, under the provisions hereinafter contained, unless there is or are in the ship one or more properly constructed privy or privies for the use of the crew; such privy or privies to be of such number and of such construction as may be approved by the surveyor hereinafter mentioned.

(4.) Every such place shall, whenever the ship is registered or re-registered, be inspected by one of the surveyors appointed by the Board of Trade under Part IV. of the Principal Act, who shall, if satisfied that the same is in all respects such as is required by this Act, give to the Collector of Customs a certificate to that effect, and thereupon such space shall be deducted from the register tonnage.

(5.) No such deduction from tonnage as aforesaid shall be authorised unless there is permanently cut in a beam, and cut in or painted on or over the doorway or hatchway of every such place, the

number of men which it is constructed to accommodate, with the words "Certified to accommodate seamen."

(6.) Every such place shall be kept free from stores or goods of any kind, not being the personal property of the crew in use during the voyage.

(7.) Upon any complaint concerning any such place as aforesaid, one of the surveyors appointed by the Board of Trade may inspect such place, and if he finds that any of the provisions of this Act with respect to the same are not complied with, he shall report the same to the Collector of Customs at the port where the ship is registered, and thereupon the registered tonnage shall be altered, and the deduction aforesaid in respect of space disallowed, unless and until it shall be certified by such surveyor, or by some other surveyor appointed by the Board of Trade, that the provisions of the Act in respect of such place are fully complied with.

(8.) If any such place in any ship is not kept free from goods and stores as aforesaid, the master shall be deemed to be in fault, and shall for every such failure to comply with the provisions of this section forfeit and pay to each seaman lodged in such place the sum of one shilling a day for each day after complaint made to him by any two or more of such seamen during which any goods or stores, not being the personal property of the crew, are stored or kept therein.

(9.) If in any other respect the provisions of this section are not observed with respect to any such place in any ship, the owner shall be deemed to be in fault, and shall for every failure to comply with the provisions of this section incur a penalty not exceeding twenty pounds.

Rules for Medical Inspection of Seamen.

10. The following rules shall be observed with respect to the medical inspection of seamen; (that is to say),

(1.) At any port where there is a Local Marine Board, the Local Marine Board, and at other ports in the United Kingdom the Board of Trade, may appoint a medical inspector of seamen.

(2.) Such medical inspector of seamen shall, on application by the owner or master of any ship, examine any seaman applying for employment in such ship, and shall give to the superintendent of the Mercantile Marine Office a report under his hand stating whether such seaman is in a fit state for duty at sea, and a copy of such report shall be given to the master or owner of the ship.

(3.) The master or owner applying for such inspection shall pay to the superintendent such fees as the Board of Trade direct, and such fees shall be paid into and form part of the Mercantile Marine Fund.

(4.) The said medical inspectors shall be remunerated for their services as the Board of Trade may direct, and such remuneration shall be paid out of the Mercantile Marine Fund.

(5.) In *British* possessions out of the United Kingdom the Governor or other officer administering the government for the time being shall have the power of appointing medical inspectors of seamen, of charging fees for inspections, when applied for, and of determining the remuneration to be paid to such inspectors.

Offences by British Subjects on board Ships.

11. If any *British* subject commits any crime or offence on board any *British* ship, or on board any foreign ship to which he does not belong, any court of justice in Her Majesty's dominions which would have had cognisance of such crime or offence if committed on board a *British* ship within the limits of the ordinary jurisdiction of such court, shall have jurisdiction to hear and determine the case as if the said crime or offence had been committed as last aforesaid.

Harbour-Master at Holyhead may be commissioned as Justice.

12. The harbour-master for the time being of the harbour of *Holyhead*, in the event of its seeming meet to Her Majesty to assign to him Her Majesty's commission to act as a justice of the peace within the limits within which he is empowered to act in harbour matters, shall, during the continuance of such assignment and of his tenure of the office of harbour-master, execute within such limits the duties of a justice of the peace, notwithstanding he may not be qualified by estate to be a justice of the peace for a county, and shall have within such limits the same power and jurisdiction as a stipendiary magistrate has by Act of Parliament when sitting at a police court or other place appointed in that behalf.

APPENDIX No. V.

AN ACT TO AMEND THE MERCHANT SHIPPING ACTS.

34 AND 35 VICTORIÆ, CAP. 110. MERCHANT SHIPPING ACTS AMENDMENT. [21ST AUGUST 1871.].

WHEREAS it is expedient to amend the Merchant Shipping Acts:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

PRELIMINARY.

Short Title.

1. This Act may be cited as the Merchant Shipping Act, 1871.

Act to be construed with Merchant Shipping Acts.

2. This Act shall be construed as one with the Merchant Shipping Act, 1854, and the Acts amending the same, and the said Acts and this Act may be cited collectively as "The Merchant Shipping Acts, 1854 to 1871."

Commencement of Act.

3. This Act shall come into operation on the first day of January one thousand eight hundred and seventy-two.

REGISTRY (PART II. OF MERCHANT SHIPPING ACT, 1854).

Particulars to be marked on Ship before Registry.

4. *Every British ship shall, before registry, be permanently and conspicuously marked, to the satisfaction of the Commissioners of Customs, as follows; (that is to say),*

Her name shall be marked on each of her bows, and her name, and the name of her port of registry, shall be marked on her stern, on a dark ground in white or yellow letters, of a length not less than four inches, and of proportionate breadth.

Her official number, and the number denoting her registered tonnage, shall be marked on her main beam.

A scale of feet shall be marked on her stem and on her stern-post in Roman capital letters or in figures, six inches in length, the lower line of such letters or figures to coincide with the draught line denoted thereby.

The Board of Trade may, however, exempt any class of ships from the requirements of this section, or any of them.

If the said scale of feet is in any respect inaccurate, so as to be likely to mislead, the owner of the ship shall incur a penalty not exceeding one hundred pounds.

The marks required by this section shall be permanently continued, and no alteration shall be made therein except in the event of any of the particulars thereby denoted being altered in the manner provided by the Merchant Shipping Acts, 1854 to 1871. *Any owner or master of a ship who neglects to keep his ship marked as aforesaid, and any person who conceals, removes, alters, defaces, or obliterates, or suffers any person under his control to conceal, remove, alter, deface, or obliterate any of the said marks, except in the event aforesaid, or except for the purpose of escaping capture by an enemy, shall for each offence incur a penalty not exceeding one hundred pounds; and any principal officer of customs may detain a ship which is insufficiently and inaccurately marked until the insufficiency or inaccuracy has been remedied: provided that no fishing vessel, duly registered, lettered, and numbered in pursuance of the "Sea Fisheries Act,* 1868," *shall be required to have her name and port of registry marked under this section.* (Repealed by 36 and 37 Vict., cap. 85, sec. 33. See now sections 3 and 5 of that Act, *post.*)

Ship's Draught of Water to be Recorded.

5. The Board of Trade may, in any case or class of cases in which they think it expedient so to do, direct any person appointed by them for the purpose to record, in such manner and with such particulars as the Board of Trade direct, the draught of water of any sea-going ship, as shown on the scale of feet on her stem and on her stern-post, upon her leaving any dock, wharf, port, or harbour for the purpose of proceeding to sea; and such person shall thereupon keep such record, and shall from time to time forward the same, or a copy thereof, to the Board of Trade; and such record, or any copy thereof, if produced by or out of the custody of the Board of Trade, shall be admissible in evidence of the draught of water of the ship at the time specified in the record.

The master of every British sea-going ship shall, upon her leaving any dock, wharf, port, or harbour for the purpose of proceeding to sea, record her draught of water in the official log-book (if any), and shall produce such record to any principal officer of customs whenever required by him so to do, or in default of such production, shall incur a penalty not exceeding twenty pounds.

Rules to be observed in Naming of Ships.

6. With respect to the names of British ships, the following rules shall be observed:

(1.) A ship shall not be described by any name other than that by which she is for the time being registered.

(2.) No change shall be made in the name of a ship without the previous permission of the Board of Trade, signified in writing under their seal, or under the hand of one of their secretaries or assistant secretaries. Upon such permission being granted, the ship's name shall forthwith be altered in the register book, in the ship's certificate of registry, and on her bows and stern.

(3.) If in any case it is shown to the satisfaction of the Board of Trade that the name of any ship has been changed without such permission as aforesaid, they shall direct that her name be altered into that which she bore before such change, and the name shall be altered in the register book, in the ship's certificate of registry, and on her bows and stern accordingly.

(4.) Where a ship having once been registered, has ceased to be so registered, no person, unless ignorant of such previous registry (proof whereof shall lie on him), shall apply to register, and no registrar shall knowingly register, such ship, except by the name by which she was previously registered, unless with the permission of the Board of Trade granted as aforesaid.

Every person who acts or suffers any person under his control to act in contravention of this section, or who omits to do, or suffers any person under his control to omit to do, anything required by this section, shall for each offence incur a penalty not exceeding one hundred pounds, and any principal officer of customs may detain the ship until the provisions of this section are complied with.

Application for a change of name shall be made in writing to the Board of Trade. If the Board are of opinion that the application is made on reasonable grounds, they may entertain the same, and shall thereupon require notice thereof to be published in such form and manner as they think fit.

MASTERS AND SEAMEN (PART III. OF MERCHANT SHIPPING ACT, 1854).

Survey of Ships alleged by Seamen to be Unseaworthy.

7. Whenever in any proceeding against any seaman or apprentice belonging to any ship for desertion or for neglecting or refusing to join or to proceed to sea in his ship, or for being absent from or quitting the same without leave, it is alleged by one-fourth of the seamen belonging to such ship, or, if the number of such seamen exceed twenty, by not less than five such seamen, that such ship is by reason of unseaworthiness, overloading, improper loading, defective equipment, or for any other reason, not in a fit condition to proceed to sea, or that the accommodation in such ship is insufficient, the court having cognisance of the case shall take such means as may be in their power to satisfy themselves concerning the truth or untruth of such allegation, and shall for that purpose receive the evidence of the person or persons making the same, and shall have power to summon any other witnesses whose evidence they may think it desirable to hear; the court shall thereupon, if satisfied that the allegation is groundless, proceed to adjudicate, but if not so satisfied, shall cause such ship to be surveyed.

Provided that no seaman or apprentice charged with desertion, or with quitting his ship without leave, shall have any right to apply for a survey

under this section, unless previously to his quitting his ship he has complained to the master of the circumstances so alleged in justification.

For the purposes of this section, the court shall require any of the surveyors appointed by the Board of Trade, under the Merchant Shipping Act, 1854, or any person appointed for the purpose by the Board of Trade, or, if such surveyor or person cannot be obtained without unreasonable expense or delay, or is not, in the opinion of the court, competent to deal with the special circumstances of the case, then any other impartial surveyor appointed by the court, and having no interest in the ship, her freight, or cargo, to survey the ship, and to answer any question concerning her which the court may think fit to put. Such surveyor or other person shall survey the ship, and make his report in writing to the court, including an answer to every question put to him by the court. The court shall cause such report to be communicated to the parties, and unless it is proved to the satisfaction of the court that the opinions expressed in such report are erroneous, the court shall determine the questions before them in accordance with those opinions.

For the purposes of such survey, a surveyor shall have all the powers of an inspector appointed by the Board of Trade under the Merchant Shipping Act, 1854.

The costs (if any) of the survey shall be determined by the Board of Trade according to a scale of fees to be fixed by them, and shall be paid in the first instance out of the Mercantile Marine Fund.

If it is proved to the satisfaction of the court that the ship is in a fit condition to proceed to sea, or, as the case may be, that the accommodation is sufficient, the costs of the survey shall be paid by the person or persons upon whose demand, or in consequence of whose allegation, the survey was made, and may be deducted by the master or owner out of the wages due or to become due to such person or persons, and shall be paid over to the Board of Trade.

If it is proved that the ship is not in a fit condition to proceed to sea, or, as the case may be, that the accommodation is insufficient, the costs of the survey shall be paid to the Board of Trade by the master or owner.

Power for Naval Courts to direct Survey of Ships.

8. Any naval court may, if they think fit, direct a survey of any ship which is the subject of an investigation held before them, and such survey shall be made in the same way, and the surveyor who makes the same shall have the same powers, as if the survey had been directed by a competent court in the course of proceedings against a seaman or apprentice for desertion or a kindred offence.

SAFETY (PART IV. OF MERCHANT SHIPPING ACT, 1854).

In cases of Collision, Master to Give Name, &c., of Vessel.

9. *In every case of collision between two vessels, it shall be the duty of the master of each vessel to give to the master of the other vessel the name of his own vessel, and of her port of registry, or of the port or place to which she belongs, and also the names of the ports or places from which and to which he is bound.*

Any failure to give such information, except under circumstances which render it impossible or unnecessary to do so (proof of which shall lie on the master failing to give it), shall involve the same consequences as failure to render assistance to the other vessel, or to the master, crew, or passengers thereof.

In this section the term "vessel" includes any vessel used in navigation, however propelled. (Repealed by 36 and 37 Vict., cap. 85, sec. 33. See now section 16 of that Act, *post.*)

Power to Board of Trade to declare Ship Unseaworthy.

10. *If complaint is made to the Board of Trade that any British ship is, by reason of the defective condition of her hull or equipments, unfit to proceed to sea, the Board may cause such ship to be surveyed by one of the surveyors appointed by them, and if such surveyor report that the hull or equipments of such ship is or are in such a state that she could not proceed to sea without serious danger to human life, the Board of Trade may declare such ship to be unseaworthy, and thereupon any principal officer of customs may detain such ship.*

Every such complaint shall be in writing, and shall state the name and address of the complainant, and a copy of the complaint, including the name and address of the complainant, shall before or during such survey be given by the Board of Trade to the master or to an owner of the ship.

If, upon such survey, such ship is found to be unseaworthy, the expenses of the survey shall be paid to the Board of Trade by the person making the complaint, without prejudice to any right of suit or action against him by any person aggrieved by the complaint.

If, upon such survey, such ship is found to be unseaworthy, the expenses of the survey shall be paid to the Board of Trade by the owner of the ship.

Any shipowner who is dissatisfied with the decision of a surveyor under this section, may appeal to any of the courts mentioned in this section having jurisdiction in the place where such ship was surveyed, and such court may, if they think fit, appoint one or more competent persons to survey such ship anew, and any surveyor so appointed shall have the powers of a surveyor appointed by the Board of Trade. Upon any such appeal, the court may make such order as to the detention or discharge of the ship, as to the payment of any costs and damages which may have been occasioned by her detention, and as to the payment of the expenses of the original survey and of the survey anew, as to the court seems just.

The courts to which appeal may be made shall be—

In England, any court having jurisdiction under the County Court Admiralty Jurisdiction, 1868.

In Ireland, any court having jurisdiction under the Court of Admiralty (Ireland) Act, 1867.

In Scotland, the court of the sheriff for the county. (Repealed by 36 and 37 Vict., cap. 85, sec. 33. See now sections 12, 13, and 14 of that Act. See also 37 and 38 Vict., cap. 51, sec. 5, *post.*)

Sending Unseaworthy Ships to Sea a Misdemeanour.

11. *Every person who, having authority as owner or otherwise to send a ship to sea, sends her to sea in an unseaworthy state, so as to endanger the*

life of any person belonging to or on board the same, shall be guilty of a misdemeanour, unless he proves that he used all reasonable means to make and keep the ship seaworthy, and was ignorant of such unseaworthiness, or that her going to sea in an unseaworthy state was, under the circumstances, reasonable and unavoidable, and for this purpose he may give evidence in the same manner as any other witness. A misdemeanour under this section shall not be punishable on summary conviction. (Repealed by 39 and 40 Vict, cap. 80. See section 4, of that Act, *post*)

Repeal of certain Sections of 17 *and* 18 *Vict, cap.* 104, *and* 18 *and* 19 *Vict, cap* 91

12 On and after the first day of January one thousand eight hundred and seventy two, the twenty-fifth and thirty-fourth sections of the Merchant Shipping Act, 1854, and the thirteenth section of the Merchant Shipping Act Amendment Act, 1855, shall be repealed.

APPENDIX No. VI.

MERCHANT SHIPPING AND PASSENGER ACTS AMENDMENT.

35 AND 36 VICT., CAP. 73. AN ACT TO AMEND THE MERCHANT SHIPPING ACTS AND THE PASSENGER ACTS. [10TH AUGUST 1872.]

WHEREAS it is expedient to amend the Merchant Shipping Acts and the Passengers Acts:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

PRELIMINARY.

Short Title.

1. This Act may be cited as "The Merchant Shipping Act, 1872."

Commencement of Act.

2. This Act shall come into operation on the first day of January one thousand eight hundred and seventy-three.

MEASUREMENT OF SHIPS.

Transfer to Board of Trade of duties of Commissioners of Customs with respect to Measurement of Ships.

3. The twenty-third, twenty-seventh, twenty-eighth, and twenty-ninth sections of the Merchant Shipping Act, 1854, the fourteenth section of the Merchant Shipping Act Amendment Act, 1855, and the fourth section of the Merchant Shipping Act, 1871, shall be read and construed as if the Board of Trade were therein named instead of the Commissioners of Customs.

REGISTRY.

Transfer to Registrar-General of Seamen of duties of Commissioners of Customs with respect to Registry of Ships.

4. The forty-sixth, fifty-fourth, ninety-second, and ninety-fourth sections of the Merchant Shipping Act, 1854, shall be read and construed as if the Registrar-General of Seamen were therein named instead of the Commis-

sioners of Customs, and the returns required to be transmitted by the said ninety-fourth section of the Merchant Shipping Act, 1854, shall be transmitted to the Registrar-General of Seamen, and not to the Custom-house in London, and the Registrar-General of Seamen shall be called the Registrar-General of Shipping and Seamen.

PASSENGER SHIPS.

Transfer to Board of Trade of powers and duties of Emigration Commissioners.

5. The sixth and seventh sections of the Passengers Act, 1855, except so much of the latter section as provides for the immunity of emigration officers, shall be repealed, and all powers and duties vested in or imposed on the Emigration Commissioners by the Passengers Act, 1855, and the Passengers Act Amendment Act, 1863, shall be transferred to and imposed on the Board of Trade.

In the construction and for the purposes of the said Acts, the name of the Board of Trade shall be deemed to be substituted for the name of the Emigration Commissioners, and anything which might, if this Act had not passed, have been done by the Emigration Commissioners, whether acting independently or under the sanction or authority of one of Her Majesty's Principal Secretaries of State, may be done by the Board of Trade independently of such sanction or authority.

Extension of Penalties for Offences connected with Applications for Assistance in Emigration.

6. The provisions contained in the eighty-third section of the Passengers Act, 1855, shall extend to any forms of application or other papers issued by or under the authority of one of Her Majesty's Principal Secretaries of State, for the use of persons desirous of emigrating by his assistance, and to any certificate, document, or statement adduced in support of any application to such Secretary for such assistance.

Transfer to Board of Trade of certain powers of Secretary of State under Passengers Act.

7. The powers conferred by the thirteenth section of the Passengers Act Amendment Act, 1863, on one of Her Majesty's Principal Secretaries of State, shall be transferred to the Board of Trade.

ANNUAL SURVEY OF PASSENGER STEAMERS.

Passenger Steamers to be surveyed once in every year according to 17 and 18 Vict., cap. 104.

8. The three hundred and fourth section of the Merchant Shipping Act, 1854, shall be repealed, and every passenger steamer shall be surveyed once at the least in every year in the manner mentioned in the fourth part of that Act. The fees to be charged for certificates issued in respect of such survey shall not exceed, for a yearly certificate, twice the sum named in the Table marked T in the Schedule to the said Act as chargeable for a six month's certificate.

PILOTAGE.

Trinity House may modify Rule as to Pilotage Rates.

9. Notwithstanding anything in the three hundred and fifty-eighth section of the Merchant Shipping Act, 1854, the Trinity House may, by bye-law made with the sanction of Her Majesty in Council, repeal or relax the provisions of that section within the whole or any part of their district, so far as to allow any pilot, or class of pilots, under their jurisdiction, to demand or receive, and any master to offer or pay, any rate less than the rate for the time being demandable by law.

Alteration of Payments made to Trinity House Pilotage Fund by Cinque Ports Pilots.

10. Whereas, in pursuance of the Pilotage Law Amendment Act, 1853, the several funds then belonging to the Cinque Ports pilots were merged into the common fund called the Trinity House Pilotage Fund, and by the same Act power was given to the Trinity House of Deptford Strond, with the approval of the Board of Trade, from time to time to make regulations for altering and determining the payments and contributions to be made to the said pilotage fund by Cinque Ports pilots licensed before the said Act came into operation: And whereas, by one of the regulations made under the authority of the said Act, it was provided that each of the said Cinque Ports pilots should pay towards the said fund eleven shillings for each turn: And whereas it has proved that the turns have been more numerous than was expected, and that the sums paid to the Trinity House, and carried to the credit of the said fund in respect of the said turns, have been larger than was assumed in making the calculations upon which the said regulation was based: And whereas it is expedient that in lieu of the said sum of eleven shillings per turn, the fixed annual sum of thirteen pounds four shillings should for the future be paid by or in respect of each of the said pilots so long as he remains unsuperannuated, and that the excess of the sum heretofore paid in each year by each pilot over the sum of thirteen pounds four shillings should be returned: And whereas doubts have been entertained whether the purposes aforesaid can be effected without the authority of Parliament: Be it enacted, that the Trinity House of Deptford Strond shall, out of the Trinity House Pilotage Fund, repay to each of the Cinque Ports pilots licensed before the Pilotage Law Amendment Act, 1853, came into operation, or if he be deceased, to his executors or administrators, the aggregate sum by which the sum of eleven shillings per turn heretofore paid by him exceeds the sum which he would have paid if he had paid thirteen pounds four shillings per annum; and that each of the said pilots shall, while he continues to act as a pilot, pay to the said Trinity House the sum of eleven shillings per turn as heretofore, from the first day of January in each year, until the sums contributed in the same year amount to an aggregate sum equal to the product of thirteen pounds four shillings multiplied by the number of pilots licensed as above who are then surviving and unsuperannuated, and that when such aggregate sum is made up, no further contributions shall be required from the said pilots until after the thirty-first day of December in the same year; and if the

said contributions during any one year fall short of the said aggregate sum, the said pilots then surviving and unsuperannuated shall, at such time and in such manner as the Trinity House may direct, make good such deficiency by payment of an additional contribution per man, to be calculated *pro ratâ* upon the number of turns which each may have carried during the said year, and any such pilot failing to pay such additional contribution shall, in default of such payment, become liable to immediate removal from active service and superannuation upon such proportion of the full pension payable to such pilot as the Trinity House may see fit.

Pilotage Authority may grant Special Sea Licences.

11. Any pilotage authority may, if authorised in that behalf by Order in Council, grant special licences qualifying the persons to whom they are granted to act as pilots for any part of the sea or channels beyond the limits of any pilotage authority, so, however, that no pilot so licensed be entitled to supersede an unlicensed pilot outside the limits of the authority by which he is licensed.

CHAIN CABLES.

Fees and Expenses in relation to testing of Chain Cables and Anchors by Trinity House, to be paid to and charged on Mercantile Marine Fund.

12. In the event of a licence for the testing of chain cables and anchors being granted to the Trinity House under the Chain Cable and Anchor Act, 1871, all fees and other sums received by the Trinity House in respect of such testing shall be carried to the Mercantile Marine Fund, and all expenses incurred by the Trinity House in respect of such testing shall be chargeable on the Mercantile Marine Fund.

GENERAL.

Duties of Surveyors.

13. All duties in relation to the survey and measurement of ships under this Act, or the Acts amended hereby, shall be performed by the surveyors appointed under the fourth part of the Merchant Shipping Act, 1854, in accordance with such regulations as may be from time to time made by the Board of Trade.

Fees and Salaries of Surveyors and Emigration Officers.

14. *All fees payable in respect of the survey or measurement of ships under this Act or the Acts amended hereby, or in respect of any services performed by any person employed under the authority of the Passengers Act,* 1855, *shall be paid to the superintendent of a Mercantile Marine Office at such times and in such manner as the Board of Trade may, from time to time direct, and shall be carried to the Mercantile Marine Fund; and the salaries of surveyors, and other expenses connected with the survey and measurement of ships under this Act or the Acts amended hereby, and also so much of the salaries and expenses of persons employed under the authority*

of the Passenger Act, 1855, as has heretofore been paid by fees, shall be paid out of the Mercantile Marine Fund. (Repealed by 39 and 40 Vict., cap. 80, *post.*)

Penalty on Surveyor, &c., receiving Gratuity, &c., for Duties performed under this Act.

15. If any surveyor, or any person employed under the authority of the Passengers Act, 1855, demands or receives, directly or indirectly, otherwise than by the direction of the Board of Trade, any fee, remuneration, or gratuity whatever in respect of any of the duties performed by him under this Act or the Acts amended hereby, he shall for every such offence incur a penalty not exceeding fifty pounds.

Owner or Agent of Home-trade Ships may enter into Time Agreements which need not expire Half-yearly.

16. The owner of home-trade ships or his agent may enter into time agreements, in forms to be sanctioned by the Board of Trade, with individual seamen to serve in any one or more ships belonging to him, which agreements need not expire on either the thirtieth day of June or the thirty-first day of December, anything in the Merchant Shipping Act to the contrary notwithstanding: Provided always, that a duplicate of each agreement entered into under the provisions of the section be forwarded to the Registrar-General of Shipping within forty-eight hours after it has been entered into.

Her Majesty may accept offers of Persons recommended by the Admiralty to serve as Officers of the Royal Naval Reserve.

17. It shall be lawful for Her Majesty to accept from time to time the offers of any person whom the Lord High Admiral or the Commissioners for executing his office may recommend, to serve as officers of reserve in the Royal Navy, upon such terms and conditions as to Her Majesty may from time to time seem fit, and the "Officers of the Royal Naval Reserve Act, 1863," shall be read and construed as if this clause formed part of the said Act.

APPENDIX No. VII.

MERCHANT SHIPPING ACTS AMENDMENT.

36 AND 37 VICTORIÆ, CAP. 85. AN ACT TO AMEND THE MERCHANT SHIPPING ACTS. [5TH AUGUST 1873.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

PRELIMINARY.

Short Title.

1. This Act may be cited as "The Merchant Shipping Act, 1873."

Construction of Act.

2. This Act shall be construed as one with the Merchant Shipping Act, 1854, and the Acts amending the same, and the said Acts and this Act may be cited collectively as "The Merchant Shipping Acts, 1854 to 1873."

REGISTRY (PART II. OF MERCHANT ACT, 1854).

Particulars to be marked on British Ships.

3. Every British ship registered after the passing of this Act shall before registry, and every British ship registered before the passing of this Act shall, on or before the first day of January one thousand eight hundred and seventy-four, be permanently and conspicuously marked to the satisfaction of the Board of Trade as follows :

Her name shall be marked on each of her bows, and her name and the name of her port of registry shall be marked on her stern, on a dark ground in white or yellow letters, or on a light ground in black letters, such letters to be of a length not less than four inches, and of proportionate breadth.

Her official number and the number denoting her registered tonnage shall be cut in on her main beam.

A scale of feet denoting her draught of water shall be marked on each side of her stem and of her stern-post in Roman capital letters or in figures, not less than six inches in length, the lower line of such letters

or figures to coincide with the draught line denoted thereby. Such letters or figures shall be marked by being cut in and painted white or yellow on a dark ground, or in such other way as the Board of Trade may from time to time approve.

The Board of Trade may, however, exempt any class of ships from the requirements of this section or any of them.

If the scale of feet showing the ship's draught of water is in any respect inaccurate, so as to be likely to mislead, the owner of the ship shall incur a penalty not exceeding one hundred pounds.

The marks required by this section shall be permanently continued, and no alteration shall be made therein, except in the event of any of the particulars thereby denoted being altered in the manner provided by the Merchant Shipping Acts, 1854 to 1873.

Any owner or master of a British ship who neglects to cause his ship to be marked as aforesaid, or to keep her so marked, and any person who conceals, removes, alters, defaces, or obliterates, or suffers any person under his control to conceal, remove, alter, deface, or obliterate any of the said marks, except in the event aforesaid, or except for the purpose of escaping capture by an enemy, shall for each offence incur a penalty not exceeding one hundred pounds; and any officer of customs, on receipt of a certificate from a surveyor or inspector of the Board of Trade that a ship is insufficiently or inaccurately marked, may detain the same until the insufficiency or inaccuracy has been remedied.

Provided that no fishing vessel duly registered, lettered, and numbered in pursuance of the Sea Fisheries Act, 1868, shall be required to have her name and port of registry marked under this section.

Provided also, that if any registered British ship is not within a port of the United Kingdom at any time before the first day of January one thousand eight hundred and seventy-four, she shall be marked as by this section required within one month after her next return to a British port of registry subsequent to that date.

Particulars to be entered in Record of Draught of Water.

4. The record of the draught of water of any sea-going ship required under section five of the Merchant Shipping Act, 1871, shall, in addition to the particulars thereby required, specify the extent of her clear side in feet and inches.

The term "clear side" means the height from the water to the upper side of the plank of the deck from which the depth of hold as stated in the register is measured, and the measurement of the clear side is to be taken at the lowest part of the side.

Every master of a sea-going ship shall, upon the request of any person appointed to record the ship's draught of water, permit such person to enter the ship and to make such inspections and take such measurements as may be requisite for the purpose of such record, and any master who fails so to do, or impedes or suffers any one under his control to impede any person so appointed in the execution of his duty, shall for each offence incur a penalty not exceeding five pounds.

36 AND 37 VICT., CAP. 85. 5TH AUGUST 1873.

Rules as to Names of Foreign Ships placed on British Register.

5. Where a foreign ship, not having at any previous time been registered as a British ship, becomes a British ship, no person shall apply to register, and no registrar shall knowingly register such ship, except by the name which she bore as a foreign ship immediately before becoming a British ship, unless with the permission of the Board of Trade granted in manner directed by section six of the Merchant Shipping Act, 1871.

Any person who acts or suffers any person under his control to act in contravention of this section shall for each offence incur a penalty not exceeding one hundred pounds.

Restrictions on Re-registration of Abandoned Ships.

6. Where a ship has ceased to be registered as a British ship by reason of having been wrecked or abandoned, or for any reason other than capture by the enemy or transfer to a person not qualified to own a British ship, such ship shall not be re-registered until she has, at the expense of the applicant for registration, been surveyed by one of the surveyors appointed by the Board of Trade, and certified by him to be seaworthy.

MASTERS AND SEAMEN (PART III. OF MERCHANT SHIPPING ACT, 1854).

Agreements with Seamen.

7. Any agreement with a seaman made under section one hundred and forty-nine of the Merchant Shipping Act, 1854, may, instead of stating the nature and duration of the intended voyage or engagement, as by that section required, state the maximum period of the voyage or engagement, and the places or parts of the world (if any) to which the voyage or engagement is not to extend.

Agreements with Fishermen.

8. The owner or master of any British vessel engaged in fishing off the coast of the United Kingdom may enter into an agreement with any person employed on such vessel that such person shall be remunerated wholly by a share in the profit of the fishing adventure.

Every such agreement shall be in writing or in print, or partly in writing and partly in print, and shall be signed by the contracting parties in the presence of a superintendent or deputy superintendent of a Mercantile Marine Office.

The superintendent or deputy superintendent shall, before such agreement is signed, read and (if necessary) explain the same to the contracting parties, and shall attest the signature of the agreement, and certify that it has been read to and agreed to by the contracting parties.

Any such agreement, if made in the manner by this section required, shall be valid and binding on all the contracting parties, notwithstanding anything contained in section one hundred and eighty-two of the Merchant Shipping Act, 1854.

Compensation to Seamen for unnecessary Detention on Charge of Desertion.

9. If a seaman or apprentice belonging to any ship is detained on a charge of desertion or any kindred offence, and if upon a survey of the ship being made under section seven of the Merchant Shipping Act, 1871, it is proved that she is not in a fit condition to proceed to sea, or that her accommodation is insufficient, the owner or master of the ship shall be liable to pay to such seaman or apprentice such compensation for his detention as the court having cognisance of the proceedings may award.

Power for Board of Trade to establish Mercantile Marine Offices and to hold Examinations at certain Ports.

10. In any case where the business of a Mercantile Marine Office is conducted otherwise than under a Local Marine Board, the Board of Trade may, if they think fit, instead of conducting such business at a custom-house or otherwise, establish a Mercantile Marine Office, and for that purpose procure the requisite buildings and property, and from time to time appoint and remove all the requisite superintendents, deputies, clerks, and servants. They may also in the like case make all such provisions and exercise all such powers with respect to the holding of examinations for the purpose of granting certificates of competency as masters, mates, or engineers, to persons desirous of obtaining the same, as might have been made or exercised by a Local Marine Board.

Power for Her Majesty, by Order in Council, to apply certain provisions of Merchant Shipping Acts to Foreign Ships.

11. *Whenever it has been made to appear to Her Majesty that the Government of any foreign state is desirous that any of the provisions of the Merchant Shipping Acts,* 1854 *to* 1873, *relating to the engagement and discharge of seamen, shall apply to the ships of such state, Her Majesty may by Order in Council declare that such of the said provisions as are in such order specified shall, subject to the limitations, if any, contained in the order, apply, and thereupon, so long as the order remains in force, such provisions shall apply, subject to the said limitations, to the ships of such state, and to the owners, masters, officers, and crews of such ships, when not within the jurisdiction of such state, in the same manner in all respects as if such ships were British ships.*

It shall be lawful for Her Majesty from time to time by Order in Council to add to, alter, or repeal any order made under this section. (Repealed by 39 and 40 Vict., cap. 80, *post.* See section 37 of that Act.)

SAFETY AND PREVENTION OF ACCIDENTS (PART IV. OF MERCHANT SHIPPING ACT 1854).

Survey of Ships suspected of being Unseaworthy.

12. *Where the Board of Trade have received a complaint or have reason to believe that any British ship is by reason of the defective condition of her hull, equipments, or machinery, or by reason of overloading or improper loading, unfit to proceed to sea without serious danger to human life, they*

may, if they think fit, appoint some competent person or persons to survey such ship, and the equipments, machinery, and cargo thereof, and to report thereon to the Board.

Any person so appointed may, for the purposes of such survey, require the unloading or removal of any cargo, ballast, or tackle, and shall have all the powers of an inspector appointed under the Merchant Shipping Act, 1854.

Any person who (having notice of the intention to hold such survey) wilfully does or causes to be done any act by which the person appointed to make such survey is prevented from or obstructed in ascertaining the condition of the ship, her equipments, machinery, and cargo, shall be liable to a penalty not exceeding fifty pounds.

The Board of Trade may, if they think fit, order that any ship be detained for the purpose of being surveyed under this section, and thereupon any officer of customs may detain such ship until her release be ordered either by the Board of Trade or by any court to which an appeal is given under this Act.

Upon the receipt of the report of the person making any such survey, the Board may, if in their opinion the ship cannot proceed to sea without serious danger to human life, make such further order as they may think requisite as to the detention of the ship or as to her release, either absolutely or upon the performance of such conditions with respect to the execution of repairs or alterations, or the unloading or reloading of cargo, as the Board may impose. They may also from time to time vary or add to such order.

A copy of any such order and of the report upon which it was founded, and also of any variation of or addition to such order, shall be delivered as soon as possible to the owner or master of the ship to which it relates.

When a ship has been detained under this section she shall not be released by reason of her British register having been closed.

Costs of Survey.

13. *If upon the survey of the ship under this Act she is reported to have been at the time of the survey, having regard to the nature of the service for which she was then intended, unfit to proceed to sea without serious danger to human life, the expenses incurred by the Board of Trade in respect of the survey shall be paid by the owner of the ship to the Board of Trade, and shall, without prejudice to any other remedy, be recoverable by them in the same manner as salvage is recoverable.*

If upon such survey the ship is not reported to have been unfit to proceed to sea, having regard to the nature of the service for which she was intended, the Board of Trade shall be liable to pay compensation to any person for any loss or damage which he may have sustained by reason of the detention of the ship for the purpose of survey, or otherwise in respect of such survey.

Where a complaint has been made to the Board of Trade that a ship is not fit to proceed to sea, they may, if they think fit, before ordering a survey of the ship, require the complainant to give or provide such security as they may think sufficient for the payment of the costs and expenses which they may incur in respect of the survey of the ship, and of the compensation which they may be rendered liable to pay for loss or damage caused by her

detention for the purpose of such survey, or otherwise in respect of such survey.

Where a ship has been surveyed under this Act in consequence of a complaint made to the Board of Trade, if upon such survey being made it appears that such complaint was made without reasonable cause, the expenses incurred by the Board in respect of the survey of the ship, and the amount, if any, which the Board may have been rendered liable to pay in respect of any loss or damage caused by her detention, shall be recoverable by the Board from such complainant.

All moneys payable by the Board of Trade in respect or by reason of the survey or detention of a ship under this Act shall, subject to the right by this section provided of recovering such moneys from the complainant, be paid out of moneys to be provided by Parliament.

Appeal from Decision of Board of Trade.

14. *If the owner of any ship surveyed under this Act is dissatisfied with any order of the Board of Trade made upon such survey, he may apply to any of the following courts having jurisdiction in the place where such ship was surveyed; that is to say:—*

In England, to any court having Admiralty jurisdiction.

In Ireland, to any court having jurisdiction under the Court of Admiralty (Ireland) Act, 1867.

In Scotland, to the court of the sheriff of the county.

The court may, upon such application, if they think fit, appoint one or more competent persons to survey the ship anew, and any surveyor so appointed shall have all the powers of the person by whom the original survey was made. Such survey anew shall, if so required by the Board of Trade or the shipowner, be made in the presence of any person or persons appointed by them respectively to attend at the survey.

The court to which such application is made may make such order as to the detention or release of the ship, as to the payment of any costs and damages which may have been occasioned by her detention, as to the payment of the expenses of the original survey, and of the survey anew, and otherwise as to the payment of any costs of and incident to the application as to the court may seem just.

Where an application is made under this section to a county court, or in Ireland to a local court, the matter of the application shall be deemed to be an Admiralty cause within the meaning of the County Courts Admiralty Jurisdiction Act, 1868, *and the Court of Admiralty (Ireland) Act,* 1867. (The last three preceding sections are repealed by 39 and 40 Vict., cap. 80, *post.* See now the provisions of that Act).

Power for Board of Trade to vary requirements as to Boats.

15. In the case of any ship surveyed under the fourth part of the Merchant Shipping Act, 1854, the Board of Trade may at the request of the owner authorise the reduction of the number and the variation of the dimensions of the boats required for the ship by section two hundred and ninety-two of that Act, and also the substitution of rafts or other appliances for saving life for any such boats, so nevertheless that the boats so

reduced or varied, and the rafts or other appliances so substituted, be sufficient for the persons carried on board the ship.

Section two hundred and ninety-three of the said Act shall extend to any such rafts or appliances in the same manner as if they were boats.

Duties of Masters in case of Collision.

16. In every case of collision between two vessels it shall be the duty of the master or person in charge of each vessel, if and so far as he can do so without danger to his own vessel, crew, and passengers (if any), to stay by the other vessel until he has ascertained that she has no need of further assistance, and to render to the other vessel, her master, crew, and passengers (if any), such assistance as may be practicable and as may be necessary in order to save them from any danger caused by the collision; and also to give to the master or person in charge of the other vessel the name of his own vessel, and of her port of registry, or of the port or place to which she belongs, and also the names of the ports and places from which and to which she is bound.

If he fails so to do, and no reasonable cause for such failure is shown, the collision shall, in the absence of proof to the contrary, be deemed to have been caused by his wrongful act, neglect, or default.

Every master or person in charge of a British vessel who fails, without reasonable cause, to render such assistance or give such information as aforesaid, shall be deemed guilty of a misdemeanour, and if he is a certificated officer, an inquiry into his conduct may be held, and his certificate may be cancelled or suspended.

Liability for Infringement of Regulations in Cases of Collision.

17. If in any case of collision it is proved to the court before which the case is tried that any of the regulations for preventing collision contained in or made under the Merchant Shipping Acts, 1854 to 1873, has been infringed, the ship by which such regulation has been infringed shall be deemed to be in fault, unless it is shown to the satisfaction of the court that the circumstances of the case made departure from the regulation necessary.

Signals of Distress.

18. The signals specified in the first Schedule to this Act shall be deemed to be signals of distress.

Any master of a vessel who uses or displays, or causes or permits any person under his authority to use or display, any of the said signals, except in the case of a vessel being in distress, shall be liable to pay compensation for any labour undertaken, risk incurred, or loss sustained in consequence of such signal having been supposed to be a signal of distress, and such compensation may, without prejudice to any other remedy, be recovered in the same manner in which salvage is recoverable.

Signals for Pilots.

19. If a vessel requires the services of a pilot, the signals to be used and displayed shall be those specified in the second Schedule to this Act.

Any master of a vessel who uses or displays, or causes or permits any person under his authority to use or display, any of the said signals for any other purpose than that of summoning a pilot, or uses, or causes or permits any person under his authority to use, any other signal for a pilot, shall incur a penalty not exceeding twenty pounds.

Power to alter Rules as to Signals.

20. Her Majesty may from time to time by Order in Council repeal or alter the rules as to signals contained in the Schedules to this Act, or make new rules in addition thereto, or in substitution therefor, and any alterations in or additions to such rules made in manner aforesaid, shall be of the same force as the rules in the said Schedules.

Private Signals.

21. Any shipowner who is desirous of using, for the purposes of a private code, any rockets, lights, or other similar signals, may register such signals with the Board of Trade, and the Board shall give public notice of the signals so registered in such manner as they may think requisite for preventing such signals from being mistaken for signals of distress or signals for pilots.

The Board may refuse to register any signals which in their opinion cannot easily be distinguished from signals of distress or signals for pilots.

When any signal has been so registered, the use or display thereof by any person acting under the authority of the shipowner in whose name it is registered shall not subject any person to any of the penalties or liabilities by this Act imposed upon persons using or displaying signals improperly.

Notice to be given of apprehended Loss of Ship.

22. If the managing owner, or, in the event of there being no managing owner, the ship's husband of any British ship have reason, owing to the non-appearance of such ship, or to any other circumstance, to apprehend that such ship has been wholly lost, he shall, as soon as conveniently may be, send to the Board of Trade notice in writing of such loss, and of the probable occasion thereof, stating the name of the ship and her official number (if any), and the port to which she belongs, and if he neglect to do so within a reasonable time, he shall incur a penalty not exceeding fifty pounds.

Restrictions on Carriage of Dangerous Goods.

23. If any person sends or attempts to send by, or, not being the master or owner of the vessel, carries or attempts to carry in any vessel, British or foreign, any dangerous goods (that is to say), aquafortis, vitriol, naphtha, benzine, gunpowder, lucifer matches, nitro-glycerine, petroleum, or any other goods of a dangerous nature, without distinctly marking their nature on the outside of the package containing the same, and giving written notice of the nature of such goods and of the name and address of the sender or carrier thereof to the master or owner of the vessel at or before the time of sending the same to be shipped or

taking the same on board the vessel, he shall for every such offence incur a penalty not exceeding one hundred pounds: Provided that if such person show that he was merely an agent in the shipment of any such goods as aforesaid, and was not aware, and did not suspect, and had no reasón to suspect, that the goods shipped by him were of a dangerous nature, the penalty which he incurs shall not exceed ten pounds.

Penalty for Misdescription of Dangerous Goods.

24. If any person knowingly sends or attempts to send by, or carries or attempts to carry in any vessel, British or foreign, any dangerous goods or goods of a dangerous nature under a false description, or falsely describes the sender or carrier thereof, he shall incur a penalty not exceeding five hundred pounds.

Power to Refuse to carry Goods suspected of being Dangerous.

25. The master or owner of any vessel, British or foreign, may refuse to take on board any package or parcel which he suspects to contain goods of a dangerous nature, and may require it to be opened to ascertain the fact.

Power to throw Overboard Dangerous Goods.

26. Where any dangerous goods as defined in this Act, or any goods which, in the judgment of the master or owner of the vessel, are of a dangerous nature, have been sent or brought aboard any vessel, British or foreign, without being marked as aforesaid, or without such notice having been given as aforesaid, the master or owner of the vessel may cause such goods to be thrown overboard, together with any package or receptacle in which they are contained; and neither the master nor the owner of the vessel shall, in respect of such throwing overboard, be subject to any liability, civil or criminal, in any court.

Forfeiture of Dangerous Goods improperly sent.

27. Where any dangerous goods have been sent or carried, or attempted to be sent or carried, on board any vessel, British or foreign, without being marked as aforesaid, or without such notice having been given as aforesaid, and where any such goods have been sent or carried, or attempted to be sent or carried, under a false description, or the sender or carrier thereof has been falsely described, it shall be lawful for any court having Admiralty jurisdiction to declare such goods, and any package or receptacle in which they are contained, to be and they shall thereupon be forfeited, and when forfeited shall be disposed of as the court directs.

The court shall have and may exercise the aforesaid powers of forfeiture and disposal notwithstanding that the owner of the goods have not committed any offence under the provisions of this Act relating to dangerous goods, and be not before the court, and have no notice of the proceedings, and notwithstanding that there be no evidence to show to whom the

goods belong; nevertheless the court may, in its discretion, require such notice as it may direct to be given to the owner or shipper of the goods before the same are forfeited.

Saving as to Dangerous Goods Acts.

28. The provisions of this Act relating to the carriage of dangerous goods shall be deemed to be in addition to and not in substitution for or in restraint of any other enactment for the like object, so nevertheless that nothing in the said provisions shall be deemed to authorise that any person be sued or prosecuted twice in the same matter.

MISCELLANEOUS AND REPEAL.

Her Majesty may, by Order in Council, declare certain Foreign Ports Ports of Registry.

29. Where, in accordance with the Foreign Jurisdiction Acts, Her Majesty exercises jurisdiction within any port out of Her Majesty's dominions, it shall be lawful for Her Majesty, by Order in Council, to declare such port a port of registry (in this Act referred to as a foreign port of registry), and by the same or any subsequent Order in Council to declare the description of persons who are to be the registrars of British ships at such foreign port of registry, and to make regulations with respect to the registry of British ships thereat.

Upon such order coming into operation it shall have effect as if it were enacted in the Merchant Shipping Acts, 1854 to 1873, and shall, subject to any exceptions and regulations contained in the order, apply in the same manner, as near as may be, as if the port mentioned in the order were an ordinary port of registry.

Fees in respect of Surveys, &c.

30. There shall be paid in respect of the several measurements, inspections, and surveys mentioned in the third Schedule hereto such fees, not exceeding those specified in that behalf in the said Schedule, as the Board of Trade may from time to time determine.

Board of Trade may sue in Name of its Officers.

31. In any legal proceedings under the Merchant Shipping Acts, 1854 to 1873, the Board of Trade may take proceedings in the name of any of their officers.

Certain Sections not to come into force until 1st November 1873.

32. The following sections of this Act, that is to say, sections sixteen, eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, twenty-six, twenty-seven, twenty-eight, shall not come into operation until the first day of November one thousand eight hundred and seventy-three.

Repeal of certain Sections of the Merchant Shipping Acts, 1862 *and* 1871; *and of certain other Sections of Merchant Shipping Acts,* 1854, 1862, *and* 1871.

33. Section twenty-nine of the Merchant Shipping Act Amendment Act, 1862, and sections four and ten of the Merchant Shipping Act, 1871, are hereby repealed; and on and after the first day of November one thousand eight hundred and seventy-three, sections three hundred and twenty-seven and three hundred and twenty-nine of the Merchant Shipping Act, 1854, sections thirty-three and thirty-eight of the Merchant Shipping Act Amendment Act, 1862, and section nine of the Merchant Shipping Act, 1871, shall be repealed; but this repeal shall not affect—

(1.) Anything duly done before this Act comes into operation.

(2.) Any right acquired or liability accrued before this Act comes into operation.

(3.) Any penalty, forfeiture, or other punishment incurred or to be incurred in respect of any offence committed before this Act comes into operation; or,

(4.) The institution of any legal proceeding or any other remedy for ascertaining, enforcing, or recovering any such liability, penalty, forfeiture, or punishment as aforesaid.

SCHEDULES.

SCHEDULE I.

SIGNALS OF DISTRESS.

In the daytime.—The following signals, numbered 1, 2, and 3, when used or displayed together or separately, shall be deemed to be signals of distress in the daytime:—

1. A gun fired at intervals of about a minute.
2. The International Code signal of distress indicated by N. C.
3. The distant signal, consisting of a square flag having either above or below it a ball, or anything resembling a ball.

At night.—The following signals, numbered 1, 2, and 3, when used or displayed together or separately, shall be deemed to be signals of distress at night:—

1. A gun fired at intervals of about a minute.
2. Flames on the ship (as from a burning tar barrel, oil barrel, &c.).
3. Rockets or shells, of any colour or description, fired one at a time, at short intervals.

SCHEDULE II.

SIGNALS TO BE MADE BY SHIPS WANTING A PILOT.

In the daytime.—The following signals, numbered 1 and 2, when used or displayed together or separately, shall be deemed to be signals for a pilot in the daytime, viz. :—

1. To be hoisted at the fore, the Jack or other national colour usually worn by merchant ships, having round it a white border, one fifth of the breadth of the flag; or
2. The International Code pilotage signal indicated by P. T.

At night.—The following signals, numbered 1 and 2, when used or displayed together or separately, shall be deemed to be signals for a pilot at night, viz. :—

1. The pyrotechnic light commonly known as a blue light every fifteen minutes; or
2. A bright white light, flashed or shown at short or frequent intervals just above the bulwarks, for about a minute at a time.

SCHEDULE III.

TABLE OF MAXIMUM FEES TO BE PAID FOR THE MEASUREMENT, SURVEY, AND INSPECTION OF MERCHANT SHIPS.

1. *For Measurement of Tonnage.*

	£	s.	d.
For a ship under 50 tons register tonnage	1	0	0
,, from 50 to 100 tons register tonnage	1	10	0
,, ,, 100 to 200 ,, ,,	2	0	0
,, ,, 200 to 500 ,, ,,	3	0	0
,, ,, 500 to 800 ,, ,,	4	0	0
,, ,, 800 to 1200 ,, ,,	5	0	0
,, ,, 1200 to 2000 ,, ,,	6	0	0
,, ,, 2000 to 3000 ,, ,,	7	0	0
,, ,, 3000 to 4000 ,, ,,	8	0	0
,, ,, 4000 to 5000 ,, ,,	9	0	0
,, ,, 5000 and upwards ,,	10	0	0

2. *For the Inspection of the Berthing or Sleeping Accommodation of the Crew.*

	£	s.	d.
For each visit to the ship	0	10	0

Provided as follows :—

1. The aggregate amount of the fees for any such inspection shall not exceed one pound (£1), whatever be the number of separate visits.
2. When the accommodation is inspected at the same time with the measurement of the tonnage, no separate fee shall be charged for such inspection.

3. *For the Survey of Emigrant Ships.*

	£	s.	d.
a. For an ordinary survey of the ship, and of her equipments, accommodation, stores, light, ventilation, sanitary arrangement, and medical stores . .	10	0	0
b. For a special survey	15	0	0
c. In respect of the medical examination of passengers and crew, for every hundred persons or fraction of a hundred persons examined	1	0	0

4. *For the Inspection of Lights and Fog Signals.*

	£	s.	d
For each visit made to a ship on the application of the owner, and for each visit made where the lights or fittings are found defective	0	10	0

Provided that the aggregate amount of fees for any such inspection shall not exceed one pound (£1), whatever be the number of separate visits.

APPENDIX No. VIII.

THE MERCHANT SHIPPING ACT, 1876.

139 AND 40 VICTORIÆ, CAP. 80.

PRELIMINARY.

Short Title.

1. This Act may be cited as "The Merchant Shipping Act, 1876."

Construction of Act.

2. This Act shall be construed as one with the Merchant Shipping Act, 1854, and the Acts amending the same; and the said Acts and this Act may be cited collectively as "The Merchant Shipping Acts, 1854 to 1876."

Commencement of Act.

3. This Act shall come into operation on the first day of October 1876 (which day is in this Act referred to as the commencement of this Act); nevertheless any Orders in Council and general rules under this Act may be made at any time after the passing of this Act, but shall not come into operation before the commencement of this Act.

UNSEAWORTHY SHIPS.

Sending Unseaworthy Ship to Sea a Misdemeanour.

4. Every person who sends or attempts to send, or is party to sending or attempting to send, a British ship to sea in such unseaworthy state that the life of any person is likely to be thereby endangered, shall be guilty of a misdemeanour, unless he proves that he used all reasonable means to ensure her being sent to sea in a seaworthy state, or that her going to sea in such unseaworthy state was, under the circumstances, reasonable and justifiable, and for the purpose of giving such proof he may give evidence in the same manner as any other witness.

Every master of a British ship who knowingly takes the same to sea in such unseaworthy state that the life of any person is likely to be thereby endangered, shall be guilty of a misdemeanour, unless he proves that her

going to sea in such unseaworthy state was, under the circumstances, reasonable and justifiable, and for the purpose of giving such proof he may give evidence in the same manner as any other witness.

A prosecution under this section shall not be instituted except by or with the consent of the Board of Trade, or of the Governor of the British possession in which such prosecution takes place.

A misdemeanour under this section shall not be punishable upon summary conviction.

Obligation of Shipowner to Crew with respect to use of reasonable Efforts to secure Seaworthiness.

5. In every contract of service, express or implied, between the owner of a ship and the master or any seaman thereof, and in every instrument of apprenticeship whereby any person is bound to serve as an apprentice on board any ship, there shall be implied, notwithstanding any agreement to the contrary, an obligation on the owner of the ship, that the owner of the ship, and the master, and every agent charged with the loading of the ship, or the preparing thereof for sea, or the sending thereof to sea, shall use all reasonable means to ensure the seaworthiness of the ship for the voyage at the time when the voyage commences, and to keep her in a seaworthy condition for the voyage during the same: Provided that nothing in this section shall subject the owner of a ship to any liability by reason of the ship being sent to sea in an unseaworthy state where, owing to special circumstances, the so sending thereof to sea is reasonable and justifiable.

Power to Detain unsafe Ships, and Procedure for such Detention.

6. Where a British ship, being in any port of the United Kingdom, is, by reason of the defective condition of her hull, equipments, or machinery, or by reason of overloading or improper loading, unfit to proceed to sea without serious danger to human life, having regard to the nature of the service for which she is intended, any such ship (hereinafter referred to as "unsafe") may be provisionally detained for the purpose of being surveyed, and either finally detained or released, as follows:

(1.) The Board of Trade, if they have reason to believe, on complaint or otherwise, that a British ship is unsafe, may provisionally order the detention of the ship for the purpose of being surveyed.

(2.) When a ship has been provisionally detained, there shall be forthwith served on the master of the ship a written statement of the grounds of her detention; and the Board of Trade may, if they think fit, appoint some competent person or persons to survey the ship, and report thereon to the Board.

(3.) The Board of Trade on receiving the report may either order the ship to be released, or, if in their opinion the ship is unsafe, may order her to be finally detained, either absolutely, or until the performance of such conditions with respect to the execution of repairs or alterations, or the unloading or reloading of cargo, as the Board think necessary for the protection of human life, and may from time to time vary or add to any such order.

(4.) Before the order for final detention is made, a copy of the report shall be served upon the master of the ship, and within seven days after such service the owner or master of the ship may appeal in the prescribed manner to the court of survey (hereinafter mentioned) for the port or district where the ship is detained.

(5.) Where a ship has been provisionally detained, the owner or master of the ship, at any time before the person appointed under this section to survey the ship makes such survey, may require that he shall be accompanied by such person as the owner or master may select out of the list of assessors for the court of survey (nominated as hereinafter mentioned), and in such case, if the surveyor and assessor agree, the Board of Trade shall cause the ship to be detained or released accordingly, but if they differ, the Board of Trade may act as if the requisition had not been made, and the owner and master shall have the like appeal touching the report of the surveyor as is before provided by this section.

(6.) Where a ship has been provisionally detained, the Board of Trade may at any time, if they think it expedient, refer the matter to the court of survey for the port or district where the ship is detained.

(7.) The Board of Trade may at any time, if satisfied that a ship detained under this Act is not unsafe, order her to be released either upon or without any conditions.

(8.) For the better execution of this section, the Board of Trade, with the consent of the Treasury, may from time to time appoint a sufficient number of fit officers, and may remove any of them.

(9.) Any officer so appointed (in this Act referred to as a detaining officer) shall have the same power as the Board of Trade have under this section of provisionally ordering the detention of a ship for the purpose of being surveyed, and of appointing a person or persons to survey her; and if he thinks that a ship so detained by him is not unsafe, may order her to be released.

(10.) A detaining officer shall forthwith report to the Board of Trade any order made by him for the detention or release of a ship.

Constitution of Court of Survey for Appeals.

7. A court of survey for a port or district shall consist of a judge sitting with two assessors.

The judge shall be such person as may be summoned for the case in accordance with the rules made under this Act out of a list (from time to time approved for the port or district by one of Her Majesty's Principal Secretaries of State, in this Act referred to as a Secretary of State) of wreck commissioners appointed under this Act, stipendiary or metropolitan police magistrates, judges of county courts, and other fit persons; but in any special case in which the Board of Trade think it expedient to appoint a wreck commissioner, the judge shall be such wreck commissioner.

The assessors shall be persons of nautical engineering or other special skill and experience; one of them shall be appointed by the Board of Trade, either generally or in each case, and the other shall be summoned

in accordance with the rules under this Act by the registrar of the court, out of a list of persons periodically nominated for the purpose by the Local Marine Board of the port, or, if there is no such board, by a body of local shipowners or merchants approved for the purpose by a Secretary of State, or, if there is no such list, shall be appointed by the judge. If a Secretary of State thinks fit at any time, on the recommendation of the Government of any British possession or any foreign state, to add any person or persons to any such list, such person or persons shall, until otherwise directed by the Secretary of State, be added to such list, and if there is no such list, shall form such list.

The county court registrar, or such other fit person as a Secretary of State may from time to time appoint, shall be the registrar of the court, and shall, on receiving notice of an appeal or a reference from the Board of Trade, immediately summon the court in the prescribed manner to meet forthwith.

The name of the registrar and his office, together with the rules made under this Act relating to the court of survey, shall be published in the prescribed manner.

Power and Procedure of Court of Survey.

8. With respect to the court of survey, the following provisions shall have effect:

(1.) The case shall be heard in open court.

(2.) The judge and each assessor may survey the ship, and shall have for the purposes of this Act all the powers of an inspector appointed by the Board of Trade under the Merchant Shipping Act, 1854.

(3.) The judge may appoint any competent person or persons to survey the ship and report thereon to the court.

(4.) The judge shall have the same power as the Board of Trade have to order the ship to be released or finally detained, but unless one of the assessors concurs in an order for the detention of the ship, the ship shall be released.

(5.) The owner and master of the ship, and any person appointed by the owner or master, and also any person appointed by the Board of Trade, may attend at any inspection or survey made in pursuance of this section.

(6.) The judge shall send to the Board of Trade the prescribed report, and each assessor shall either sign the report, or report to the Board of Trade the reasons for his dissent.

Rules for Procedure of Court of Survey, &c.

9. The Lord Chancellor of Great Britain may from time to time (with the consent of the Treasury so far as relates to fees) make, and when made revoke, alter, and add to general rules to carry into effect the provisions of this Act with respect to a court of survey, and in particular with respect to the summoning of and procedure before the court, the requiring on an appeal security for costs and damages, the amount and application of fees, and the publication of the rules.

All such rules while in force shall have effect as if enacted in this Act,

and the expression "prescribed" in the provisions of this Act relating to the detention of ships or court of survey means prescribed by such rules.

Liability of Board of Trade and Shipowner for Costs and Damages.

10. If it appears that there was not reasonable and probable cause, by reason of the condition of the ship or the act or default of the owner, for the provisional detention of the ship, the Board of Trade shall be liable to pay to the owner of the ship his costs of and incidental to the detention and survey of the ship, and also compensation for any loss or damage sustained by him by reason of the detention or survey.

If a ship is finally detained under this Act, or if it appears that a ship provisionally detained was, at the time of such detention, unsafe within the meaning of this Act, the owner of the ship shall be liable to pay to the Board of Trade their costs of and incidental to the detention and survey of the ship, and those costs shall, without prejudice to any other remedy, be recoverable as salvage is recoverable.

For the purposes of this Act the costs of and incidental to any proceeding before a court of survey, and a reasonable amount in respect of the remuneration of surveyor or officer of the Board of Trade, shall be deemed to be part of the costs of the detention and survey of the ship, and any dispute as to the amount of costs under this Act may be referred to one of the masters or registrars of the Supreme Court of Judicature, who, on request made to him for that purpose by the Board of Trade, shall ascertain and certify the proper amount of such costs.

An action for any costs or compensation payable by the Board of Trade under this section may be brought against the secretary thereof by his official title as if he were a corporation sole; and if the cause of action arises in Ireland, it shall be lawful for any of the superior courts of Common Law in Ireland in which such action may be commenced, to order that the summons or writ may be served on the Crown and Treasury Solicitor for Ireland, in such manner and on such terms as to extension of time and otherwise as to the court shall seem fit, and that such service shall be deemed good and sufficient service of such summons or writ upon the Secretary of the Board of Trade.

Power to require from Complainant security for Costs.

11. Where a complaint is made to the Board of Trade or a detaining officer that a British ship is unsafe, the Board or officer may, if they or he think fit, require the complainant to give security to the satisfaction of the Board for the costs and compensation which he may become liable to pay as hereinafter mentioned.

Provided that where the complaint is made by one-fourth, being not less than three, of the seamen belonging to the ship, and is not in the opinion of the Board or officer frivolous or vexatious, such security shall not be required, and the Board or officer shall, if the complaint is made in sufficient time before the sailing of the ship, take proper steps for ascertaining whether the ship ought to be detained under this Act.

Where a ship is detained in consequence of any complaint, and the circumstances are such that the Board of Trade are liable under this Act

to pay to the owner of the ship any costs or compensation, the complainant shall be liable to pay to the Board of Trade all such costs and compensation as the Board incur or are liable to pay in respect of the detention and survey of the ship.

Supplemental Provisions as to Detention of Ship.

12. (1.) A detaining officer shall have for the purpose of his duties under this Act the same powers as an inspector appointed by the Board of Trade under the Merchant Shipping Act, 1854.

(2.) An order for the detention of a ship, provisional or final, and an order varying the same, shall be served as soon as may be on the master of the ship.

(3.) When a ship has been detained under this Act, she shall not be released by reason of her British register being subsequently closed.

(4.) For the purposes of a survey of a ship under this Act any person authorised to make the same may go on board the ship and inspect the same and every part thereof, and the machinery, equipments, and cargo, and may require the unloading or removal of any cargo, ballast, or tackle.

(5.) The provisions of the Merchant Shipping Act, 1854, with respect to persons who wilfully impede an inspector, or disobey a requisition or order of an inspector, shall apply as if those provisions were herein enacted, with the substitution for the inspector of any judge, assessor, officer, or surveyor who under this Act has the same powers as an inspector, or has authority to survey a ship.

FOREIGN SHIPS, OVERLOADING.

Application to Foreign Ships of Provisions as to Detention.

13. Where a foreign ship has taken on board all or any part of her cargo at a port in the United Kingdom, and is whilst at that port unsafe by reason of overloading or improper loading, the provisions of this Act with respect to the detention of ships shall apply to that foreign ship as if she were a British ship, with the following modifications:

(1.) A copy of the order for the provisional detention of the ship shall be forthwith served on the consular officer for the state to which the ship belongs at or nearest to the place where the ship is detained.

(2.) Where a ship has been provisionally detained, the consular officer, on the request of the owner or master of the ship, may require that the person appointed by the Board of Trade to survey the ship shall be accompanied by such person as the consular officer may select, and in such case, if the surveyor and such person agree, the Board of Trade shall cause the ship to be detained or released accordingly, but if they differ, the Board of Trade may act as if the requisition had not been made, and the owner and master shall have the appeal to the court of survey touching the report of the surveyor which is before provided by this Act; and

(3.) Where the owner or master of the ship appeals to the court of survey, the consular officer, on the request of such owner or master, may appoint any competent person who shall be assessor in such case in lieu of the assessor who, if the ship were a British ship, would be appointed otherwise than by the Board of Trade.

In this section the expression "consular officer" means any consul-general, vice-consul, consular agent, or other officer recognised by a Secretary of State as a consular officer of a foreign state.

APPEAL ON REFUSAL OF CERTAIN CERTIFICATES TO SHIPS.

Appeal on Refusal of certain Certificates under Merchant Shipping and Passenger Acts.

14. Whereas by section 309 of the Merchant Shipping Act, 1854, and enactments amending the same, the owner of a passenger steamer as defined in that Act is required to cause the same to be surveyed by a shipwright surveyor and an engineer surveyor, and those surveyors are required to give declarations of certain particulars with respect to the sufficiency or conformity with the Act of the ship and equipments, and to the limits beyond which the ship is not fit to ply, and to the number of passengers which the ship is fit to carry, and of other particulars in the said section mentioned, and the Board of Trade, under section 312 of the same Act, issue a certificate upon such declarations, and the passenger steamer cannot lawfully proceed to sea without obtaining such certificate:

And whereas under sections 11 and 50 of the Passengers Acts, 1855, and the enactments amending the same, a passenger ship within the meaning of those sections (in this Act referred to as an emigrant ship) cannot lawfully proceed to sea without a certificate of clearance from an emigration officer, or other officer in those sections mentioned, showing that all the requirements of the said sections and enactments have been complied with, and that the ship is in the officer's opinion seaworthy, and that the passengers and crew are in a fit state to proceed to sea, and otherwise as therein mentioned:

And whereas by section 30 of the Merchant Shipping Act Amendment Act, 1862, provision is made for preventing a ship from proceeding to sea in certain cases without a certificate from a surveyor or person appointed by the Board of Trade to the effect that the ship is properly provided with lights, and with the means of making fog signals:

And whereas it is expedient to give in the said cases such appeal as hereinafter mentioned: Be it therefore enacted that—

If a shipowner feels aggrieved,

(1.) By a declaration of a shipwright surveyor or an engineer surveyor respecting a passenger steamer under the above-recited enactments, or by the refusal of a surveyor to give the said declaration; or,

(2.) By the refusal of a certificate of clearance for an emigrant ship under the above-recited enactments; or,

(3.) By the refusal of a certificate as to lights or fog signals under the above-recited enactment;

The owner may appeal in the prescribed manner to the court of survey for the port or district where the ship for the time being is.

On such appeal the judge of the court of survey shall report to the Board of Trade on the question raised by the appeal, and the Board of Trade, when satisfied that the requirements of the report and the other provisions of the said enactments have been complied with, may—

(1.) In the case of a passenger steamer, give their certificate under section 312 of the Merchant Shipping Act, 1854; and,

(2.) In the case of an emigrant ship, give, or direct the emigration or other officer to give, a certificate of clearance under the above-mentioned enactments; and,

(3.) In the case of a refusal of a certificate as to lights or fog signals, give, or direct a surveyor or other person appointed by them to give, a certificate under section 30 of the Merchant Shipping Act Amendment Act, 1862.

Subject to any order made by the judge of the court of survey, the costs of and incidental to an appeal under this section shall follow the event.

Subject as aforesaid, the provisions of this Act with respect to the court of survey and appeals thereto, so far as consistent with the tenor thereof, shall apply to the court of survey when acting under this section, and to appeals under this section.

Where the survey of a ship is made for the purpose of a declaration or certificate under the above-recited enactments, the person appointed to make the survey shall, if so required by the owner, be accompanied on the survey by some person appointed by the owner, and in such case, if the said two persons agree, there shall be no appeal to the court of survey in pursuance of this section.

SCIENTIFIC REFEREES.

Reference in difficult Cases to Scientific Persons.

15. If the Board of Trade are of opinion that an appeal under this Act involves a question of construction or design, or of scientific difficulty or important principle, they may refer the matter to such one or more out of a list of scientific referees from time to time approved by a Secretary of State, as may appear to possess the special qualifications necessary for the particular case, and may be selected by agreement between the Board of Trade and the appellant, or in default of any such agreement by a Secretary of State, and thereupon the appeal shall be determined by the referee or referees, instead of by the court of survey.

The Board of Trade, if the appellant in any appeal so require, and give security to the satisfaction of the Board to pay the costs of and incidental to the reference, shall refer that appeal to a referee or referees so selected as aforesaid.

The referee or referees shall have the same powers as a judge of the court of survey.

PASSENGER STEAMERS AND EMIGRANT SHIPS.

Exemption of certain Steamers from Passenger Certificates.

16. Any steam-ship may carry passengers not exceeding twelve in number, although she has not been surveyed by the Board of Trade as a passenger

steamer, and does not carry a Board of Trade certificate as provided by the Merchant Shipping Act, 1854, with respect to passenger steamers.

Colonial Certificates for Passenger Steamers.

17. Where the Legislature of any British possession provides for the survey of and grant of certificates for passenger steamers, and the Board of Trade report to Her Majesty that they are satisfied that the certificates are to the like effect, and are granted after a like survey, and in such manner as to be equally efficient with the certificates granted for the same purpose in the United Kingdom under the Acts relating to Merchant Shipping, it shall be lawful for Her Majesty by Order in Council—

(1.) To declare that the said certificates shall be of the same force as if they had been granted under the said Acts; and,

(2.) To declare that all or any of the provisions of the said Acts which relate to certificates granted for passenger steamers under those Acts shall, either without modification or with such modifications as to Her Majesty may seem necessary, apply to the certificates referred to in the order; and,

(3.) To impose such conditions and to make such regulations with respect to the said certificates, and to the use, delivery, and cancellation thereof, as to Her Majesty may seem fit, and to impose penalties not exceeding fifty pounds for the breach of such conditions and regulations.

Provision against Double Survey in case of Passenger Steamers and Emigrant Ships.

18. In every case where a passenger certificate has been granted to any steamer by the Board of Trade under the provisions of the Merchant Shipping Act, 1854, and remains still in force, it shall not be requisite for the purposes of the employment of such steamer under the Passengers Acts that she shall be again surveyed in her hull and machinery in order to qualify her for service under the Passengers Act, 1855, and the Acts amending the same; but for the purposes of employment under those Acts such Board of Trade certificate shall be deemed to satisfy the requirements of the Passengers Acts with respect to such survey, and any further survey of the hull and machinery shall be dispensed with, and so long as a steam-ship is an emigrant ship, that is a passenger ship within the meaning of the Passengers Act, 1855, and the Acts amending the same, and the provisions contained in the said Passengers Acts as to the survey of her hull, machinery, and equipments have been complied with, she shall not be subject to the provisions of the Merchant Shipping Act, 1854, with respect to the survey of and certificate for passenger steamers, or to the enactments amending the same.

Provision as to Survey of Foreign Passenger Steamer or Emigrant Ship.

19. Where a foreign ship is a passenger steamer subject to the Merchant Shipping Act, 1854, and the Acts amending the same, or an emigrant ship subject to the Passengers Act, 1855, and the Acts amending the

same, and the Board of Trade are satisfied, by the production of a foreign certificate of survey attested by a British consular officer at the port of survey, that such ship has been officially surveyed at a foreign port, and are satisfied that the requirements of the said Acts, or any of them, are proved by such survey to have been substantially complied with, the Board may, if they think fit, dispense with any further survey of the ship in respect of the requirements so complied with, and give or direct one of their officers to give a certificate, which shall have the same effect as if given upon survey under the said Acts, or any of them: Provided that Her Majesty may by Order in Council direct that this section shall not apply in the case of an official survey at any foreign port at which it appears to Her Majesty that corresponding provisions are not extended to British ships.

Power to modify Passengers Acts as to Food, Space, and Accommodation in Emigrant Ships.

20. It shall be lawful for the Board of Trade, if satisfied that the food, space, accommodation, or any other particular or thing provided in an emigrant ship for any class of passengers is superior to the food, space, accommodation, or other particular or thing required by the Passengers Act, 1855, and the Acts amending the same, to exempt such ship from any of the requirements of those Acts with respect to food, space, or accommodation, or other particular or thing, in such manner and upon such conditions as the Board of Trade may think fit.

Provision of Signals of Distress, inextinguishable Lights, and Life-Buoys in Passenger Steamers and Emigrant Ships.

21. Every sea-going passenger steamer and every emigrant ship shall be provided to the satisfaction of the Board of Trade—

(1.) With means for making the signals of distress at night specified in the First Schedule to "The Merchant Shipping Act, 1873," or in any rules substituted therefor, including means of making flames on the ship which are inextinguishable in water, or such other means of making signals of distress as the Board of Trade may previously approve; and,

(2.) With a proper supply of lights inextinguishable in water and fitted for attachment to life-buoys.

If any such steamer or ship goes to sea from any port of the United Kingdom without being so provided as required by this section, for each default in any of the above requisites the owner shall, if he appears to be in fault, incur a penalty not exceeding one hundred pounds, and the master shall, if he appears to be in fault, incur a penalty not exceeding fifty pounds.

GRAIN CARGOES.

Stowage of Cargo of Grain, &c.

22. No cargo of which more than one-third consists of any kind of grain, corn, rice, paddy, pulse, seeds, nuts, or nut kernels, hereinafter referred to as "grain cargo," shall be carried on board any British ship,

unless such grain cargo be contained in bags, sacks, or barrels, or secured from shifting by boards, bulkheads, or otherwise.

If the managing owner or master of any British ship, or any agent of such owner who is charged with the loading of the ship or the sending her to sea, knowingly allows any grain cargo or part of a grain cargo to be shipped therein for carriage contrary to the provisions of this section, he shall for every such offence incur a penalty not exceeding three hundred pounds, to be recovered upon summary conviction.

DECK CARGOES.

Space occupied by Deck Cargo to be liable to Dues.

23. If any ship, British or foreign, other than home-trade ships as defined by the Merchant Shipping Act, 1854, carries as deck cargo, that is to say, in any uncovered space upon deck, or in any covered space not included in the cubical contents forming the ship's registered tonnage, timber, stores, or other goods, all dues payable on the ship's tonnage shall be payable as if there were added to the ship's registered tonnage the tonnage of the space occupied by such goods at the time at which such dues become payable.

The space so occupied shall be deemed to be the space limited by the area occupied by the goods and by straight lines enclosing a rectangular space sufficient to include the goods.

The tonnage of such space shall be ascertained by an officer of the Board of Trade or of customs, in manner directed by sub-section 4 of section 21 of the Merchant Shipping Act, 1854, and when so ascertained, shall be entered by him in the ship's official log-book, and also in a memorandum which he shall deliver to the master; and the master shall, when the said dues are demanded, produce such memorandum in like manner as if it were the certificate of registry, or, in the case of a foreign ship, the document equivalent to a certificate of registry, and in default shall be liable to the same penalty as if he had failed to produce the said certificate or document.

Penalty for carrying Deck-Loads of Timber in Winter.

24. After the 1st day of November 1876, if a ship, British or foreign, arrives between the last day of October and the 16th day of April in any year at any port in the United Kingdom from any port out of the United Kingdom, carrying as deck cargo, that is to say, in any uncovered space upon deck, or in any covered space not included in the cubical contents forming the ship's registered tonnage, any wood goods coming within the following descriptions; that is to say,

(*a.*) Any square, round, waney, or other timber, or any pitch pine, mahogany, oak, teak, or other heavy wood goods whatever; or,

(*b.*) Any more than five spare spars or store spars, whether or not made, dressed, and finally prepared for use; or,

(*c.*) Any deals, battens, or other light wood goods of any description to a height exceeding 3 feet above the deck;

The master of the ship, and also the owner, if he is privy to the offence, shall be liable to a penalty not exceeding five pounds for every hundred

cubic feet of wood goods carried in contravention of this section, and such penalty may be recovered by action or on indictment or to an amount not exceeding one hundred pounds (whatever may be the maximum penalty recoverable) on summary conviction.

Provided that a master or owner shall not be liable to any penalty under this section—

(1.) In respect of any wood goods which the master has considered it necessary to place or keep on deck during the voyage on account of the springing of any leak, or of any other damage to the ship received or apprehended; or,

(2.) If he proves that the ship sailed from the port at which the wood goods were loaded as deck cargo at such time before the last day of October as allowed a sufficient interval, according to the ordinary duration of the voyage, for the ship to arrive before that day at the said port in the United Kingdom, but was prevented from so arriving by stress of weather or circumstances beyond his control; or,

(3.) If he proves that the ship sailed from the port at which the wood goods were loaded as deck cargo at such time before the 16th day of April as allowed a reasonable interval, according to the ordinary duration of the voyage, for the ship to arrive after that day at the said port in the United Kingdom, and by reason of an exceptionally favourable voyage arrived before that day.

Provided further, that nothing in this section shall affect any ship not bound to any port in the United Kingdom which comes into any port of the United Kingdom under stress of weather, or for repairs, or for any other purpose than the delivery of her cargo.

DECK AND LOAD LINES.

Marking of Deck-Lines.

25. Every British ship (except ships under eighty tons register employed solely in the coasting trade, ships employed solely in fishing, and pleasure yachts) shall be permanently and conspicuously marked with lines of not less than twelve inches in length and one inch in breadth, painted longitudinally on each side amidships, or as near thereto as is practicable, and indicating the position of each deck which is above water.

The upper edge of each of these lines shall be level with the upper side of the deck plank next the waterway at the place of marking.

The lines shall be white or yellow on a dark ground, or black on a light ground.

Marking of Load-Line on Foreign-going British Ships.

26. With respect to the marking of a load-line on British ships the following provisions shall have effect:—

(1.) The owner of every British ship (except ships under eighty tons register employed solely in the coasting trade, ships employed solely in fishing, and pleasure yachts) shall, before entering his ship outwards from any port in the United Kingdom upon any voyage for which he is required so to enter her, or, if that is not

practicable, as soon after as may be, mark upon each of her sides amidships, or as near thereto as is practicable, in white or yellow on a dark ground, or in black on a light ground, a circular disc twelve inches in diameter, with a horizontal line eighteen inches in length drawn through its centre.

(2.) The centre of this disc shall indicate the maximum load-line in salt water to which the owner intends to load the ship for that voyage.

(3.) He shall also, upon so entering her, insert in the form of entry delivered to the collector or other principal officer of customs a statement in writing of the distance in feet and inches between the centre of this disc and the upper edge of each of the lines indicating the position of the ship's decks which is above that centre.

(4.) If default is made in delivering this statement in the case of any ship, any officer of customs may refuse to enter the ship outwards.

(5.) The master of the ship shall enter a copy of this statement in the agreement with the crew before it is signed by any member of the crew, and no superintendent of any Mercantile Marine Office shall proceed with the engagement of the crew until this entry is made.

(6.) The master of the ship shall also enter a copy of this statement in the official log-book.

(7.) When a ship has been marked as by this section required, she shall be kept so marked until her next return to a port of discharge in the United Kingdom.

Marking of Load-Line in case of Coasting Vessels.

27. With respect to the marking of a load-line on British ships employed in the coasting trade, the following provisions shall have effect:

(1.) The owner of every British ship employed in the coasting trade on the coasts of the United Kingdom (except ships under eighty tons register employed solely in that trade) shall, before proceeding to sea from any port, mark upon each of her sides amidships, or as near thereto as is practicable, in white or yellow on a dark ground, or in black on a light ground, a circular disc twelve inches in diameter, with a horizontal line eighteen inches in length drawn through its centre.

(2.) The centre of this disc shall indicate the maximum load-line in salt-water to which the owner intends to load the ship, until notice is given of an alteration.

(3.) He shall also once in every twelve months, immediately before the ship proceeds to sea, send or deliver to the collector or other principal officer of customs of the port of registry of the ship a statement in writing of the distance in feet and inches between the centre of the disc and the upper edge of each of the lines indicating the position of the ship's decks which is above that centre.

(4.) The owner, before the ship proceeds to sea after any renewal or alteration of the disc, shall send or deliver to the collector or other principal officer of customs of the port of registry of the ship notice in writing of such renewal or alteration, together with such

statement in writing as before mentioned of the distance between the centre of the disc and the upper edge of each of the deck-lines.

(5.) If default is made in sending or delivering any notice or statement required by this section to be sent or delivered, the owner shall be liable to a penalty not exceeding one hundred pounds.

(6.) When a ship has been marked as by this section required, she shall be kept so marked until notice is given of an alteration.

Penalty for Offences in relation to Marks on Ships.

28. Any owner or master of a British ship who neglects to cause his ship to be marked as by this Act required, or to keep her so marked, or who allows the ship to be so loaded as to submerge in salt water the centre of the disc, and any person who conceals, removes, alters, defaces, or obliterates, or suffers any person under his control to conceal, remove, alter, deface, or obliterate, any of the said marks, except in the event of the particulars thereby denoted being lawfully altered, or except for the purpose of escaping capture by an enemy, shall for each offence incur a penalty not exceeding one hundred pounds.

If any of the marks required by this Act is in any respect inaccurate, so as to be likely to mislead, the owner of the ship shall incur a penalty not exceeding one hundred pounds.

INVESTIGATIONS INTO SHIPPING CASUALTIES.

Appointment, Duties, and Powers of Wreck Commissioners for investigating Shipping Casualties.

29. For the purpose of rendering investigations into shipping cusualties more speedy and effectual, it shall be lawful for the Lord High Chancellor of Great Britain to appoint from time to time some fit person or persons to be a wreck commissioner or wreck commissioners for the United Kingdom, so that there shall not be more than three such commissioners at any one time, and to remove any such wreck commissioner; and in case it shall become necessary to appoint a wreck commissioner in Ireland, the Lord Chancellor of Ireland shall have the appointment and the power of removal of such wreck commissioner.

It shall be the duty of a wreck commissioner, at the request of the Board of Trade, to hold any formal investigation into a loss, abandonment, damage, or casualty (in this Act called a shipping casualty) under the eighth part of the Merchant Shipping Act, 1854, and for that purpose he shall have the same jurisdiction and powers as are thereby conferred on two justices; and all the provisions of the Merchant Shipping Acts, 1854 to 1876, with respect to investigations conducted under the eighth part of the Merchant Shipping Act, 1854, shall apply to investigations held by a wreck commissioner.

Assessors and Rules of Procedure on formal Investigations into Shipping Casualties.

30. The wreck commissioner, justices, or other authority holding a formal investigation into a shipping casualty shall hold the same with

the assistance of an assessor or assessors of nautical engineering or other special skill or knowledge, to be appointed by the commissioner, justices, or authority out of a list of persons for the time being approved for the purpose by a Secretary of State.

The commissioner, justices, or authority, when of opinion that the investigation is likely to involve the cancellation or suspension of the certificate of a master or mate, shall, where practicable, appoint a person having experience in the merchant service to be one of the assessors.

Each assessor shall either sign the report made on the investigation, or report to the Board of Trade his reasons for his dissent therefrom.

The Lord High Chancellor of Great Britain may from time to time, with the consent of the Treasury so far as relates to fees, make, and when made revoke, alter, and add to general rules for carrying into effect the enactments relating to formal investigations into shipping casualties, and in particular with respect to the summoning of assessors, the procedure, the parties, the persons allowed to appear, the notice to such parties and persons or to persons affected, and the amount and application of fees.

All such rules, while in force, shall have effect as if enacted in this Act.

Every formal investigation into a shipping casualty shall be conducted in such manner that if a charge is made against any person, that person shall have an opportunity of making a defence.

Power for Wreck Commissioner to institute Examination with respect to Ships in Distress under 17 *and* 18 *Vict., cap.* 104, *sec.* 448.

31. A wreck commissioner may, at the request of the Board of Trade, by himself or by some deputy approved by the Board of Trade, institute the same examination as a receiver of wreck under section 448 of the Merchant Shipping Act, 1854, and shall for that purpose have the powers by that section conferred on a receiver of wreck.

Power to hold Inquiries or formal Investigations as to Stranded and Missing Ships.

32. In the following cases—

(1.) Whenever any ship on or near the coasts of the United Kingdom, or any British ship elsewhere, has been stranded or damaged, and any witness is found in any place in the United Kingdom; or,

(2.) Whenever a British ship has been lost or is supposed to have been lost, and any evidence can be obtained in the United Kingdom as to the circumstances under which she proceeded to sea or was last heard of;

The Board of Trade (without prejudice to any other powers) may, if they think fit, cause an inquiry to be made or formal investigation to be held, and all the provisions of the Merchant Shipping Acts, 1854 to 1876, shall apply to any such inquiry or investigation as if it had been made or held under the eighth part of the Merchant Shipping Act, 1854.

Place of Investigation.

33. A formal investigation into a shipping casualty may be held at any place appointed in that behalf by the Board of Trade, and all enactments

relating to the authority holding the investigation shall, for the purpose of the investigation, have effect as if the place so appointed were a place appointed for the exercise of the ordinary jurisdiction of that authority.

MISCELLANEOUS.

Enforcing Detention of Ship.

34. Where under the Merchant Shipping Acts, 1854 to 1876, or any of them, a ship is authorised or ordered to be detained, any commissioned officer on full pay in the naval or military service of Her Majesty, or any officer of the Board of Trade or customs, or any British consular officer, may detain the ship; and if the ship after such detention, or after service on the master of any notice of or order for such detention, proceeds to sea before it is released by competent authority, the master of the ship, and also the owner, and any person who sends the ship to sea, if such owner or person be party or privy to the offence, shall forfeit and pay to Her Majesty a penalty not exceeding one hundred pounds.

Where a ship so proceeding to sea takes to sea when on board thereof in the execution of his duty any officer authorised to detain the ship, or any surveyor or officer of the Board of Trade or customs, the owner and master of the ship shall each be liable to pay all expenses of and incidental to the officer or surveyor being so taken to sea, and also a penalty not exceeding one hundred pounds, or if the offence is not prosecuted in a summary manner, not exceeding ten pounds for every day until the officer or surveyor returns, or until such time as would enable him after leaving the ship to return to the port from which he is taken, and such expenses may be recovered in like manner as the penalty.

Service of Order on Master, &c.

35. Where any order, notice, statement, or document requires, for the purpose of any provision of this Act, to be served on the master of a ship, the same shall be served, where there is no master, and the ship is in the United Kingdom, on the managing owner of the ship, or if there is no managing owner, on some agent of the owner residing in the United Kingdom, or where no such agent is known or can be found, by affixing a copy thereof to the mast of the ship.

Any such order, notice, statement, or document may be served by delivering a copy thereof personally to the person to be served, or by leaving the same at his last place of abode, or in the case of a master, by leaving it for him on board the ship with the person being or appearing to be in command or charge of such ship.

Any person who obstructs the service of any order, notice, statement, or document on the master of a ship shall incur a penalty not exceeding ten pounds, and if the owner or master of the ship is party or privy to such obstruction, he shall be guilty of a misdemeanour.

Ship's Managing Owner or Manager to be Registered.

36. The name and adress of the managing owner for the time being of every British ship registered at any port or place in the United Kingdom shall be registered at the custom-house of the ship's port of registry.

Where there is not a managing owner, there shall be so registered the name of the ship's husband or other person to whom the management of the ship is intrusted by or on behalf of the owner; and any person whose name is so registered shall, for the purposes of the Merchant Shipping Acts, 1854 to 1876, be under the same obligations, and subject to the same liabilities, as if he were the managing owner.

If default is made in complying with this section, the owner shall be liable, or if there be more owners than one, each owner shall be liable in proportion to his interest in the ship, to a penalty not exceeding in the whole one hundred pounds each time the ship leaves any port in the United Kingdom.

Power for Her Majesty by Order in Council to apply certain provisions of Merchant Shipping Acts to Foreign Ships.

37. Whenever it has been made to appear to Her Majesty that the Government of any foreign state is desirous that any of the provisions of the Merchant Shipping Acts, 1854 to 1876, or of any Act hereafter to be passed amending the same, shall apply to the ships of such state, Her Majesty may by Order in Council declare that such of the said provisions as are in such order specified shall (subject to the limitations, if any, contained in the order) apply, and thereupon, so long as the order remains in force, such provisions shall apply (subject to the said limitations) to the ships of such state, and to the owners, masters, seamen, and apprentices of such ships, when not locally within the jurisdiction of such state, in the same manner in all respects as if such ships were British ships.

Provision as to Order in Council.

38. Where Her Majesty has power under the Merchant Shipping Act, 1854, or any Act passed or hereafter to be passed amending the same, to make an Order in Council, it shall be lawful for Her Majesty from time to time to make such Order in Council, and by Order in Council to revoke, alter, or add to any order so made.

Every such order in Council shall be published in the "London Gazette," and shall be laid before both Houses of Parliament within one month after it is made, if Parliament be then sitting, or if not, within one month after the then next meeting of Parliament.

Upon the publication of any such order in the "London Gazette," the order shall, after the date of such publication, or any later date mentioned in the order, take effect as if it were enacted by Parliament.

Fees, Salaries, and Costs.

39. On and after the first day of January 1877, all fees payable in respect of the survey or measurement of ships under the Merchant Shipping Acts, 1854 to 1876, or in respect of any services performed by any person employed under the authority of the Passengers Act, 1855, shall continue to be paid to the superintendent of a Mercantile Marine Office at such times and in such manner as the Board of Trade from time to time direct, but shall be paid into the receipt of Her Majesty's

Exchequer in such manner as the Treasury from time to time direct, and shall be carried to and form part of the Consolidated Fund of the United Kingdom.

On and after the same day the salaries of all surveyors appointed under the Merchant Shipping Acts, 1854 to 1876, and so much of the expenses connected with the survey and measurement of ships under those Acts, and of the salaries and expenses of persons employed under the Passengers Act, 1855, as has heretofore been paid out of the Mercantile Marine Fund, shall be paid out of moneys provided by Parliament, and the Treasury shall have the like control over such salaries and expenses as has heretofore been vested in the Board of Trade.

There may be paid out of moneys provided by Parliament to any wreck commissioner, judge of a court of survey, assessor, registrar of a court of survey, detaining officer, scientific referee, and other officer or person appointed under this Act, such salary or remuneration (if any) as the Treasury from time to time direct.

There may be paid out of moneys provided by Parliament all costs and compensation payable by the Board of Trade in pursuance of this Act.

Legal Proceedings in case of Offences.

40. For the purpose of punishment, jurisdiction, and legal proceedings, an offence under this Act shall be deemed to be an offence under the Merchant Shipping Act, 1854.

Application of Act to Scotland.

41. In the application of this Act to Scotland—

The provision with respect to a prosecution not being instituted except by or with the consent of the Board of Trade shall not apply.

"Judge of a county court" shall be deemed to include a sheriff and sheriff-substitute; and

"Registrar of a county court" shall be deemed to include sheriff-clerk; and

"A master of the Supreme Court of Judicature" shall mean the Queen's and Lord Treasurer's Remembrancer.

Application of Act to Ireland.

42. In the application of this Act to Ireland—

"Judge of a county court" shall be deemed to include "chairman of a county" and "the recorder of any borough;"

"Registrar of a county court" shall be deemed to include the clerk of the peace or registrar or other person discharging the duties of registrar of the court; of the chairman of a county, or the recorder of a borough;

"Stipendiary magistrate" shall be deemed to include any of the justices of the peace in Dublin metropolis and any resident magistrate; and

"A master of the Supreme Court of Judicature" shall mean one of the masters of the Superior Courts of Common Law in Ireland.

Application of Act to Isle of Man.

43. In the application of this Act to the Isle of Man—

"Judge of a county court" shall mean the water bailiff;

"Stipendiary magistrate" shall mean a high bailiff;

"Registrar of a country court" shall mean a clerk to a deemster or a clerk to justices of the peace;

"A master of the Supreme Court of Judicature" shall mean the clerk of the rolls.

Saving for Colonial Inland Waters.

44. Nothing in this Act shall apply to any vessel employed exclusively in trading or going from place to place in any river or inland water of which the whole or part is in any British possession, and the provisions of this Act relating to deck cargo shall not apply to deck cargo carried by a ship while engaged in the coasting trade of any British possession.

REPEAL.

Repeal of Acts.

45. On and from the commencement of this Act the Acts specified in the first part of the Schedule hereto, and on and from the first day of January 1877 the Acts specified in the second part of the Schedule hereto, shall be repealed to the extent in the third column of that Schedule mentioned: Provided that any officer appointed in pursuance of any such enactment shall be deemed to have been appointed under this Act, and any Order in Council made in pursuance of any such enactment shall be deemed to have been made under this Act; and this repeal shall not affect—

(1.) Anything done or suffered under any enactment hereby repealed; nor,

(2.) Any right, power, duty, obligation, or liability acquired, imposed, accrued, or incurred under any enactment hereby repealed; nor,

(3.) Any penalty or punishment incurred in respect of any offence against any enactment hereby repealed; nor,

(4.) Any legal proceeding in respect of any such right, power, duty, obligation, liability, penalty, or punishment, and any such legal proceeding may be carried on as if this Act had not passed.

SCHEDULE.

PART I.

ENACTMENTS REPEALED FROM COMMENCEMENT OF ACT.

Session and Chapter.	Title.	Extent of Repeal.
17 and 18 Vict., cap. 104.	The Merchant Shipping Act, 1854.	Sub-section (4) of section 301; so much of section 318 as requires the owner of a ship to transmit the declarations therein mentioned; section 434; and section 437 from "and in case he so requires" inclusive to the end of section; and section 449.
34 and 35 Vict., cap. 110.	The Merchant Shipping Act, 1871.	Section 11.
36 and 37 Vict., cap. 85.	The Merchant Shipping Act, 1873.	Sections 11, 12, 13, and 14.
38 and 39 Vict., cap. 88.	The Merchant Shipping Act, 1875.	The whole Act.

PART II.

ENACTMENTS REPEALED FROM 1ST JANUARY 1877.

Session and Chapter.	Title.	Extent of Repeal.
17 and 18 Vict., cap. 104.	The Merchant Shipping Act, 1854.	Sub-section (2) of section 418.
35 and 36 Vict., cap. 73.	The Merchant Shipping Act, 1872.	Section 14.

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The numbers refer to the sections *of the principal Act, or if the matter is not contained in that Act, to the* page *of the Appendix where the provision will be found.*

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